

DA 19-0104

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 228

WHITEFISH CONGREGATION OF
JEHOVAH'S WITNESSES, INC.,

Plaintiff, Appellee,
and Cross Appellant,

v.

GIUSEPPE CALTABIANO and JAMIE CALTABIANO,

Defendants and Appellants.

APPEAL FROM: District Court of the Eleventh Judicial District,
In and For the County of Flathead, Cause No. DV-17-1091B
Honorable Robert B Allison, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Sean S. Frampton, Frampton Purdy Law Firm, Whitefish, Montana

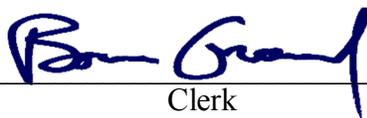
For Appellee:

Kimberly S. More, Crowley Fleck PLLP, Kalispell, Montana

Submitted on Briefs: July 10, 2019

Decided: September 24, 2019

Filed:


Clerk

Justice James Jeremiah Shea delivered the Opinion of the Court.

¶1 Appellants Giuseppe Caltabiano and Jamie Caltabiano (collectively “Caltabianos”), appeal the judgment of the Eleventh Judicial District, Flathead County, concluding that the Whitefish Congregation of Jehovah’s Witnesses, Inc. (Congregation) has a valid, enforceable easement across the Caltabianos’ property, and granting the Congregation’s permanent injunction prohibiting the Caltabianos from interfering with the Congregation’s use of the easement. The Congregation cross-appeals the District Court’s decision not to award attorney fees. We address the following issues on appeal:

Issue One: Whether the District Court erred by finding an easement in favor of the Congregation.

Issue Two: Whether the District Court erred when it entered a permanent injunction prohibiting the Caltabianos from interfering with the Congregation’s access, via the easement, to its property from Lion Mountain Road.

Issue Three: Whether the Congregation is entitled to attorney fees.

¶2 We affirm.

PROCEDURAL AND FACTUAL BACKGROUND

¶3 The Congregation is a Montana nonprofit religious corporation located in Whitefish, Montana. On August 4, 1994, the Congregation purchased an undivided property along Highway 93 West by warranty deed. At the time, the property was vacant and served by two access points: one along Highway 93 to the south, and the other along Lion Mountain Road (LMR) to the north.

¶4 Also in 1994, the Congregation applied for a conditional use permit from Flathead County Regional Development Office (FRDO) to build a church. The Flathead County Board of Adjustment considered the Congregation’s application and issued permit FCU-94-9, subject to ten conditions. Relevant to this case, Condition No. 2 provided that: “the proposed access from [LMR] be approved by the Flathead County Road Department by obtaining an approach permit.”

¶5 In 1995, the Congregation applied to FRDO for a preliminary plat approval of a two-lot subdivision. The Congregation proposed that the property be divided into two adjacent flag lots with separate access to what would be called “Tracts A and B.”¹ The Congregation planned to build a church on Tract A, and access to Tract B would be from LMR.

¶6 FRDO staff recommended that the Congregation delete the flag-mast portion of Tract A fronting LMR and establish a road and utility easement in its place to provide a second point of access from Tract A to LMR. On May 15, 1995, the Whitefish City Council approved the two-lot subdivision preliminary plat, subject to the FRDO recommendations. Congregation members constructed a gravel road between Tract A and LMR and erected a gate on the Congregation’s property that controlled through-access to LMR via Highway 93. At this point, the preliminary plat was not signed, and the application process terminated.

¹ The subdivided parcels are referred to by various designations throughout the record, including “Lot 1 and 2.” For clarity, this Opinion will refer to the two parcels as “Tract A” (the Congregation and church parcel located at 1900 Highway 93) and “Tract B” (owned by the Caltabianos and located at 2075 Lion Mountain Road).

¶7 In 1996, the Congregation built a church on Tract A. Tract B remained vacant. From 1996-1999, Congregation members utilized both the LMR and Highway 93 access points for ingress and egress to the church. In 1999, the Congregation resubmitted an application for a two-lot subdivision. The resubmission triggered another review of the 1995 application. On May 26, 1999, the FRDO Site Review Committee met and discussed the proposal and recommended that (1) the Access and Utility Easement (Easement) be at least sixty feet in width; (2) the final plat reflect the Easement; and (3) access to Tract B be off the Easement and not another access off LMR.

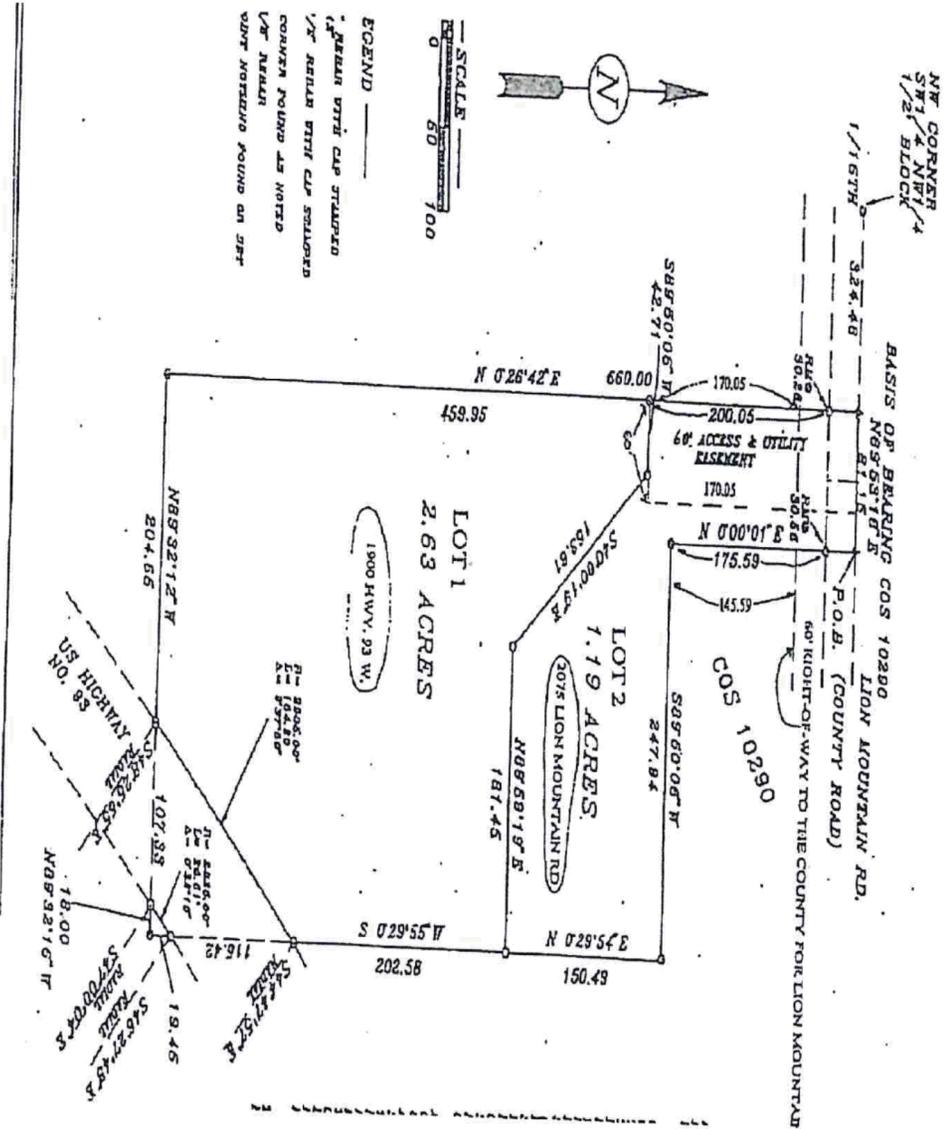
¶8 On July 6, 1999, the Whitefish City Council approved the Congregation's preliminary plat, subject to nine conditions of approval. Relevant to this case, Condition No. 3 provided:

The flag-mast portion of Tract A fronting on Lion Mountain Road shall be deleted, and a road and utility easement of 40 feet minimum width across Tract B shall be established in its place. **This road and utility easement shall be used by both Tract A and B jointly and there shall be a shared access point onto Lion Mountain Road.** This easement then will provide an access from Tract A to Lion Mountain Road in addition to the access point on Highway 93.

(Emphasis added.)

¶9 By letter dated August 3, 1999, the FRDO director reviewed the Congregation's proposed final subdivision plat and determined that it met all nine conditions imposed by the Whitefish City Council. The FRDO director noted that the proposed final subdivision plat—to become Subdivision Plat No. 149—clearly depicted the sixty-foot Easement on its face. The FRDO director also noted that sixty feet is the standard width for a city street in Whitefish and that an easement intended only for utility use would typically be

ten to twenty feet wide. Finally, the FRDO director noted that the diagram on the plat identified the location of the Easement and that it was for access. On August 16, 1999, the Whitefish City Council granted final approval for the subdivision. Two days later, Plat No. 149 was recorded and is depicted as follows:



¶10 Plat No. 149 depicts the sixty-foot Easement that crosses Tract B (identified on Plat No. 149 as “Lot 2”). The Easement provided a meters-and-bounds description of the Easement boundaries and contained the following easement description:

Access and Utility Easement Certificate

The undersigned hereby grants each and every person, firm, operation, whether public or private, providing or offering to provide utilities or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair and liens of facilities, in over, under and across each area designated on their plat as 'Access & Utility Easement' to have and to hold forever.

The Access and Utility Easement Certificate did not identify the Congregation, did not use the words "ingress" or "egress," and did not describe that the Easement was for commercial use.

¶11 On August 20, 1999, the Congregation sold the second lot, Tract B of Plat No. 149, by warranty deed to Dale and Angela Novak (collectively "Novaks"). The conveyance was free from all encumbrances, except easements "apparent or of record." The Novaks built a house on the property, after which the property changed hands several times.² The occupant from 2002-2006, a tenant of the Tract B owners, testified that he never saw anyone use the Easement to enter or exit church property and never knew the Congregation and church members had any right to use the same road between the Tract B home he occupied and the LMR access point.

¶12 In 2006, the Caltabianos purchased Tract B by warranty deed. As part of the sale, the Caltabianos received a title insurance policy that referenced the "Access & Utility Easement" and excluded it from coverage.

² In 2002, the Novaks conveyed Tract B to Rose Marie Leever by warranty deed. In 2005, Leever transferred an undivided one-half interest in Tract B to Richard C. Leever, Trustee of the Richard C. Leever Revocable Living Trust UAD May 2, 2000 and an undivided one-half interest in Tract B to Rose Marie Leever, Trustee of the Rose Marie Leever Revocable Living Trust UAD May 2, 2000.

¶13 During the summer of 2015, a construction project on Highway 93 resulted in vehicle traffic passing through the church gate going to and from LMR. According to the Caltabianos, this was the first time they observed vehicles using LMR to access Tract A. The Congregation informed the Caltabianos that the gate would remain open to allow traffic to move between the church and LMR over the Easement while the road construction project was underway. The Caltabianos objected and placed their trailer on what they termed to be “[their] driveway” to block vehicle movement to and from the church.

¶14 The Caltabianos sought out information regarding the Easement and how to terminate it. On August 3, 2015, the Caltabianos received an e-mail from the Whitefish Planning Office notifying them that forty feet of the sixty-foot wide easement could not be eliminated without Congregation approval. The Caltabianos objected, stating they did not believe the Congregation had any right to use the Easement. When the Congregation insisted on using it, the Caltabianos erected a fence and other impediments across the Easement.

¶15 On November 1, 2017, the Congregation sued the Caltabianos and (1) requested a declaratory judgment to establish the easement; (2) sought damages resulting from trespass; and (3) requested injunctive relief.³

³ Prior to trial, the Congregation dismissed its claim for damages, and the Caltabianos agreed to remove their impediments if the District Court ruled in favor of the Congregation. As a result, the only issue tried was the existence and interpretation of the Easement.

¶16 On January 7, 2019, the District Court presided over a bench trial. The FRDO director testified that the term “access” had the same meaning as a road providing ingress and egress to the property. The Caltabianos testified that they were aware of the “Access & Utility Easement” language and depiction of the same on Plat No. 149. However, they testified they construed both as describing a utility easement only. The Caltabianos testified they never saw church members or anyone else use the Easement prior to 2015, and; therefore, they thought of the Easement as an access that applied only to their property, Tract B. Howard Bauer, a Congregation member, testified about his role in constructing the gravel roadway along the Easement and regarding the regular use and maintenance of the Easement by Congregation members since the 1990s.

¶17 On January 29, 2019, the District Court issued its Findings of Fact, Conclusions of Law, and Order. The District Court held that the term “Access” as used in the phrase “Access & Utility Easement Certificate” and on the plat diagram was ambiguous. The District Court, therefore, resorted to extrinsic evidence to determine the scope of the easement, and concluded:

Based upon the 1993-1999 history of events preceding recordation of the plat [on] August 18, 1999, the [District] Court concludes the plat was intended to establish two ingress/egress access points for the benefit of [Tract A]: Highway 93 and LMR. Thus, the word “Access” on the plat means ingress/egress for the benefit of [Tract A] **for all purposes**, not limited to utility installation or utility maintenance purposes. In addition to the development history of the plat, the conjunctive “Access & Utility” rather than simply “Utility Easement” implies two easements: general ingress/egress[, and] utility related ingress/egress. § 28-3-202[,] MCA. [The Caltabianos] were essentially told this in . . . the August 3, 2015 email from the Whitefish Planning Office.

. . .

[I]t is impossible for the [District] Court to conclude the LMR access point was never used for church ingress and egress during the period of 2002-2015.

(Emphasis in original).

¶18 The District Court held that the Congregation had an Easement granting ingress and egress from LMR across the Caltabianos' property (Tract B). The District Court permanently enjoined the Caltabianos from interfering with the Congregation's access. Finally, the District Court held that the Caltabianos had a basis to contest the Easement and denied the Congregation's application for attorney fees.

¶19 On February 7, 2019, the District Court entered its written Judgment, concluding: (1) the Easement depicted on Plat No. 149 was a valid recorded easement providing the ingress and egress from LMR across the Caltabianos' property (Tract B) to the Congregation's property (Tract A); (2) the Congregation was entitled to a permanent injunction prohibiting the Caltabianos from interfering with Congregation members', guests', and invitees' use of the Easement; (3) the Caltabianos could not prohibit the Congregation members', guests', and invitees' use entry upon or use of the Easement; (4) the Caltabianos must permanently remove the gate placed across the Easement no later than April 1, 2019; (5) the injunctive relief is binding upon the Caltabianos and their agents, heirs, successors, and assigns; (6) the Caltabianos took nothing by way of their counterclaim; and (7) the Congregation was entitled to recover \$295 in costs and disbursement plus interest.

¶20 The Caltabianos appeal, and the Congregation cross-appeals.

STANDARDS OF REVIEW

¶21 Construction and interpretation of a contract, including whether ambiguity exists, is a question of law. *Mary J. Baker Revocable Trust v. Cenex Harvest States, Coops., Inc.*, 2007 MT 159, ¶ 19, 338 Mont. 41, 164 P.3d 851; *Kapor v. RJC Inv., Inc.*, 2019 MT 41, ¶ 55, 394 Mont. 311, 434 P.3d 869. The interpretation of an easement is also a question of law. *Mary J. Baker Revocable Trust*, ¶ 18. We review a district court's conclusions of law de novo for correctness. *Blazer v. Wall*, 2008 MT 145, ¶ 22, 343 Mont. 173, 183 P.3d. 84.

¶22 This Court reviews a district court's findings of fact to determine whether the findings are clearly erroneous. *Larsen v. Richardson*, 2011 MT 195, ¶ 25, 361 Mont. 344, 260 P.3d 103. A finding of fact is clearly erroneous if it is not supported by substantial evidence, if the trial court misapprehended the effect of the evidence, or if a review of the record leaves the Court with a definite and firm conviction that a mistake has been made. *Richardson*, ¶ 25.

¶23 We review a district court's grant or denial of injunctive relief for a manifest abuse of discretion. *Larson v. State*, 2019 MT 28, ¶ 16, 394 Mont. 167, 434 P.3d 241 (citation omitted). A manifest abuse of discretion is one that is obvious, evident, or unmistakable. *Shammel v. Canyon Res. Corp.*, 2003 MT 372, ¶ 12, 319 Mont. 132, 82 P.3d 912.

¶24 A district court has equitable power to grant complete relief, including attorney fees, absent statutory authority on a case-by-case basis. *Foy v. Anderson*, 176 Mont. 507, 511, 580 P.2d 114, 116-17 (1978). We review a district court's decision whether to grant

or to deny attorney fees in the context of a declaratory judgment action for an abuse of discretion. *Kenyon-Noble Lumber Co. v. Dependant Founds., Inc.*, 2018 MT 308, ¶ 11, 393 Mont. 518, 432 P.3d 118; *Ferdig Oil Co. v. ROC Gathering, LLP*, 2018 MT 307, ¶ 29, 393 Mont. 500, 423 P.3d 118; *see also Abbey/Land, LLC v. Glacier Constr. Partners, LLC*, 2019 MT 19, ¶ 62, 394 Mont. 135, 433 P.3d 1230.

DISCUSSION

¶25 *Issue One: Whether the District Court erred by finding an easement in favor of the Congregation.*

¶26 An easement is a non-possessory right to use the land of another for a limited purpose. *Taylor v. Mont. Power Co.*, 2002 MT 247, ¶¶ 23-24, 312 Mont. 134, 58 P.3d 162. An easement is created by operation of law, by an instrument in writing, or by prescription. *Taylor*, ¶ 24 (citations omitted). “The breadth and scope of an easement are determined by the actual terms of the grant.” *Mary J. Baker Revocable Trust*, ¶ 18 (citing *Mularoni v. Bing*, 2001 MT 215, ¶ 32, 306 Mont. 405, 34 P.3d 497); § 70-17-106, MCA (the extent of a servitude—the subjection of property to an easement—is “determined by the terms of the grant or the nature of the enjoyment by which it was acquired.”). An easement may be expressly granted by the appropriate language in an instrument of conveyance, or by referring, in an instrument of conveyance, to a recorded plat or certificate of survey on which the easement is clearly depicted or adequately described. *Broadwater Dev. LLC v. Nelson*, 2009 MT 317, ¶ 25, 352 Mont. 401, 219 P.3d 492; *Yorum Props., Ltd. v. Lincoln County*, 2013 MT 298, ¶ 16, 372 Mont. 159, 311 P.3d 748; *Blazer*, ¶ 41. This Court has set out two requirements for

adequately describing an easement: (1) identification of the dominant and servient tenements must be “ascertainable with reasonable certainty” from the transaction documents, and (2) the transaction documents must give the owner of the property being burdened by the servitude “knowledge of its use or necessity.” *Yorlum Props., Ltd.*, ¶ 18 (quoting *Davis v. Hall*, 2012 MT 125, ¶¶ 20, 24-25, 365 Mont. 216, 280 P.3d 261; *Blazer*, ¶¶ 36, 46, 51, 56-57).

¶27 “[W]hen land is sold with reference to a properly recorded plat, the plat becomes part of the instrument conveying the interest in the land.” *Blazer*, ¶ 36 (citing *Halverson v. Turner*, 268 Mont. 168, 173, 885 P.2d 1285, 1289 (1994)); § 76-3-304, MCA.

¶28 The construction of a writing granting an interest in real property, such as an easement, is governed by rules of contract interpretation. *Broadwater Dev. LLC*, ¶ 19 (citations omitted). Accordingly, when the terms of an agreement have been reduced to writing by the parties, the writing is considered to contain all necessary terms, and no evidence of terms of the agreement other than the contents of the writing should be considered. *Broadwater Dev. LLC*, ¶ 19; § 28-2-905, MCA (“[w]henever the terms of an agreement have been reduced to writing by the parties, it is considered as containing all those terms. . . .”). However, if the terms of a contract are ambiguous—reasonably subject to two different meanings—or interpretation of the term requires resolving a question of fact regarding the intent, courts may allow the parties to introduce extrinsic evidence to prove intent of the parties. *Kapor*, ¶ 26 (citing *Watters v. City of Billings*, 2017 MT 211, ¶ 16, 388 Mont. 376, 404 P.3d 379); *Mary J. Baker Revocable Trust*, ¶ 55,

see also § 28-2-905, MCA; *Eaton v. Morse*, 212 Mont. 233, 241, 687 P.2d 1004, 1008 (1984).

¶29 The District Court concluded the “Access & Utility Easement” depicted on Plat No. 149 was a valid recorded easement providing ingress and egress for all purposes from LMR across the Caltabianos’ property (Tract B) to the Congregation’s property (Tract A).

¶30 The Caltabianos argue that Montana law is clear that purchasers of real property are entitled to rely upon publicly recorded deeds and plats and are not required to track down unrecorded extrinsic evidence to ascertain any use or scope of a purported easement. The Caltabianos argue that because there was no ambiguity in the language of the easement, the District Court was not allowed to consider extrinsic evidence. Instead, the Caltabianos contend, the District Court should have interpreted the terms of the Easement from the writing alone instead of basing its decision on the non-recorded planning documents from the City of Whitefish.

¶31 The Caltabianos also argue that, even considering the extrinsic evidence, the Congregation fails to establish an easement because Plat No. 149 failed to adequately describe an ingress/egress easement for Congregation use. The Caltabianos point out that extrinsic evidence can only assist in understanding a certain meaning but cannot create an easement that does not otherwise exist. The Caltabianos argue that regardless of whether the Congregation intended to reserve an easement for such access, it failed to properly express its intent and reserve an easement for access purposes. The Caltabianos argue that the Easement appearing on Plat No. 149 was explained in plain language, did not

identify the Congregation or Tract A as a beneficiary or dominant estate, and it did not provide that the Easement was for ingress and egress for the Congregation to access LMR. Finally, the Caltabianos argue that the Congregation is not an entity providing utility or sewer services to the public; therefore, the easement would not apply to the Congregation in any event.

¶32 The Congregation responds that the Caltabianos' strained interpretation of the word "Access" creates ambiguity. The use of the separate words "Access" and "Utility" to describe the Easement reveal a clear intent to define them as two separate Easements. The Congregation contends the District Court did not consider extrinsic evidence to alter or vary the terms of the Easement; rather, the extrinsic evidence was considered to provide the District Court with a full understanding of the circumstances under which the Easement was created. The Congregation contends that the District Court's conclusion that the word "Access" means ingress/egress for the benefit of Tract A "for all purposes" is supported by substantial evidence.

¶33 The Easement on Plat. No. 149 is clearly depicted and adequately described. *See Yorlum Props., Ltd.*, ¶ 16; *Broadwater Dev. LLC*, ¶ 25. The Easement is obvious from the plat diagram, it contains a metes-and-bounds description of the dimensions; and it is clear from the plat that Tract B is the servient estate, and Tract A is the dominant estate. *See Yorlum Props., Ltd.*, ¶ 26; *Davis*, ¶¶ 23-25. Further, the Caltabianos acknowledged they were aware that an "Access & Utility Easement" burdened the property prior to purchasing Tract B. Thus, the Caltabianos had knowledge of the

Easement's existence, even if its scope was uncertain. *See Yorlum Props., Ltd.*, ¶ 18; *Blazer*, ¶¶ 51, 54.

¶34 The District Court properly determined that the term "Access" in the "Access & Utility Easement Certificate" and as used on the "Access & Utility Easement" on the plat diagram was ambiguous. *See Kapor*, ¶ 26; *Watters*, ¶ 16. Additionally, the plat description allotted for a sixty-foot wide road, far greater than necessary for a typical utility easement, creating further ambiguity of the intended purpose. *See Kapor*, ¶ 26. This ambiguity necessitated an examination of extrinsic evidence. *See Kapor*, ¶ 26; *Mary J. Baker Revocable Trust*, ¶ 55; § 28-2-905, MCA.

¶35 The extrinsic evidence dictated the scope of the Easement and clearly evinced intent that the Easement be used as an additional point for ingress/egress onto Tract A. *See Mary J. Baker Revocable Trust*, ¶ 19. The 1994 conditional use permit issued to the Congregation and the requirements imposed by the Flathead County Board of Adjustment for subdivision approval explicitly required the Congregation's property to have two separate access points. The 1999 recommendations from the FRDO Site Review Committee included a sixty-foot easement. The 1999 preliminary and final approval by the Whitefish City Council was conditioned upon a forty-foot minimum "road and utility easement" to be used "by both Tract A and B jointly, and there shall be a shared access point" onto LMR. The 1999 letter from the FRDO director noted that the diagram on Plat No. 149 identified the location of the Easement and that it was for access. At the time of purchase, the Caltabianos received a title insurance policy that referenced the "Access & Utility Easement" burdening Tract B and excluded it from

coverage. Finally, the Congregation presented evidence of historic use of the Easement by its members and visitors since the church and road were constructed around 1996. Accordingly, the District Court did not err when it considered extrinsic evidence and concluded the Congregation had an Easement “for all purposes.” See *Mary J. Baker Revocable Trust*, ¶ 19; *Blazer*, ¶ 22.

¶36 *Issue Two: Whether the District Court erred when it entered a permanent injunction prohibiting the Caltabianos from interfering with the Congregation’s access, via the easement, to its property from Lion Mountain Road.*

¶37 An order, no matter what its purpose, that requires a person to refrain from a particular act for any period of time is an injunction. *Jefferson v. Big Horn County*, 2000 MT 163, ¶ 17, 300 Mont. 284, 4 P.3d 26 (quoting *Sheridan Cty. Elec. Coop., Inc. v. Ferguson*, 124 Mont. 543, 554, 227 P.2d 597, 603 (1951)). An injunction is an equitable remedy granting prospective relief. *Jefferson*, ¶ 17 (citing 42 Am. Jur. 2d Injunctions § 1 (1969)).

¶38 After determining that the Caltabianos had placed various obstructions, including a fence and gate, across the Easement, the District Court granted the Congregation a permanent injunction prohibiting the Caltabianos from interfering with the Congregation’s use of the Easement. The District Court ordered the Caltabianos to permanently remove the gate presently in place across the Easement. The District Court concluded that the Caltabianos were barred from denying entry upon or use of the easement by the Congregation’s members, guests, and invitees and from constructing or placing any kind of building, barricade, or structure across the Easement.

¶39 The Congregation argues that the District Court properly determined that a permanent injunction was necessary. The Congregation argues that the obstructions and gate installed by the Caltabianos across the Easement prevented the Congregation and its members, guests, and invitees from accessing and traversing the Easement—interfering with its property right. We agree.

¶40 After concluding that the Congregation had an Easement to cross the Caltabianos' property and after the Caltabianos admitted to deliberately blocking access to and obstructing the easement, the District Court properly determined a future prohibition of such access obstruction was necessary to preserve the Congregation's ability to use its property right. This grant of injunctive relief was not an obvious, evident, or unmistakable error. *See Shammel*, ¶ 12. Rather, it was a logical conclusion that flowed from the facts and circumstances of the present case. From the record before us, we cannot conclude that the District Court manifestly abused its discretion when it entered a permanent injunction prohibiting the Caltabianos from interfering with the Congregation's access to its property via LMR. *See Larson*, ¶ 16.

¶41 *Issue Three: Whether the Congregation is entitled to attorney fees.*

¶42 A party in a civil action is usually not entitled to attorney fees absent a specific contractual or statutory provision. *United Nat'l Ins. Co. v. St. Paul Fire & Marine Ins. Co.*, 2009 MT 269, ¶ 37, 352 Mont. 105, 214 P.3d 1260 (citations omitted). However, attorney fees, as supplemental relief, may be ordered when a court, in its discretion, determines such relief is "necessary or proper." *Wagner v. Woodward*, 2012 MT 19, ¶ 31, 363 Mont. 403, 270 P.3d 21 (citing *Trs. of Ind. Univ. v. Buxbaum*, 2003 MT 97,

¶ 42, 315 Mont. 210, 69 P.3d 663; § 27-8-313, MCA (“[f]urther relief based on a declaratory judgment or degree may be granted whenever necessary or proper. . . .”); *Mungas v. Great Falls Clinic, LLP*, 2009 MT 426, ¶ 43, 354 Mont. 50, 221 P.3d 1230. The threshold question is “whether the equities support a grant of attorney fees,” *Mungas*, ¶ 45, and such relief is rarely afforded, *Beebe v. Bd. of Dirs. of Bridger Creek Subdivision Cmty. Ass’n*, 2015 MT 183, ¶ 27, 379 Mont. 484, 352 P.3d 1094 (citing § 27-8-313, MCA). The equities generally do not support an award of attorney fees “if similarly situated parties genuinely dispute their rights.” *Hughes v. Ahlgren*, 2011 MT 189, ¶ 16, 361 Mont. 319, 258 P.3d 439.

¶ 43 The District Court awarded the Congregation \$295 in costs and disbursement plus interest. *See* § 25-9-205, MCA (“interest is payable on judgments recovered in the courts of this state on the cost incurred to obtain or enforce a judgment”). The District Court concluded that despite the Caltabianos’ “callous disregard” for the Congregation’s rights under the Easement once fully informed, the Caltabianos’ conduct was mitigated by their purchase of the property without professional advice; the likelihood that the plat was not viewed prior to purchase; the Caltabianos’ probable ignorance of the 1993-1999 plat development history; and the probability this history was not made known to them by prior counsel.

¶ 44 The Congregation argues the District Court abused its discretion when it declined to award the Congregation reasonable attorney fees and costs associated with pursuing the lawsuit against the Caltabianos. The Congregation argues it is entitled to attorney fees and costs, and such relief is “just and proper.”

¶45 Both parties in this case were similarly situated and were genuinely disputing their rights. *See Hughes*, ¶ 16. The District Court was in the best position to determine an appropriate attorney fee award, *see Ferdig Oil Co.*, ¶ 29, and such relief was discretionary, *see* § 27-8-313, MCA; *Wagner*, ¶ 31. The District Court did not abuse its discretion when it declined to award the Congregation attorney fees. *See Kenyon-Noble Lumber Co.*, ¶ 11; *Ferdig Oil Co.*, ¶ 29.

CONCLUSION

¶46 The District Court did not err when it concluded that the Congregation had an Easement for all purposes across the Caltabianos' property. The District Court did not manifestly abuse its discretion when it granted the Congregation a permanent injunction barring the Caltabianos from obstructing the Easement. The District Court did not abuse its discretion when it denied the Congregation's request for additional attorney fees and costs in pursuing its litigation against the Caltabianos. We affirm.

/S/ JAMES JEREMIAH SHEA

We Concur:

/S/ MIKE McGRATH
/S/ INGRID GUSTAFSON
/S/ BETH BAKER
/S/ JIM RICE