IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 20-0448

SHELTER VALLEY ROAD USER'S ASSOCIATION, INC., a Montana nonprofit corporation,

Plaintiff and Appellee,

v.

DON EVAN RUSSELL, individually; DON EVAN RUSSELL and GWEN RUSSELL a/k/a GWENDOLYN RUSSELL, jointly; DONALD BOYD WALTERS, JR. a/k/a DONALD B. WALTERS, JR. and MARCI JO WALTERS, jointly; DEBRA RUSSELL; WILLIAM JEFFREY RUSSELL; ANNE DENISTON RUSSELL; WILLIAM M. RUSSELL; and KAREN SMITH-RUSSELL, in her capacity of Trustee of the K.E. Smith Revocable Trust dated March 5, 2012; and ALL OTHER PERSONS UNKNOWN, CLAIMING ANY RIGHT TITLE, ESTATE OR INTEREST IN OR ENCUMBRANCE UPON THE REAL PROPERTY DESCRIBED IN THE COMPLAINT ADVERSE TO PLAINTIFF'S TITLE, OR ANY CLOUD UPON PLAINTIFF'S TITLE, WHETHER THE CLAIM OR POSSIBLE CLAIM IS PRESENT OR CONTINGENT, and DOES 1 THROUGH 10 inclusive,

(William M. Russell) Defendant 2 and Appellant

APPELLANT'S OPENING BRIEF

For Appellant:

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Attorney for SVRUA

COMES NOW, pro se Appellant William M. Russell, who files this Opening Brief.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Whether Summary Judgment in favor of SVRUA was appropriate?

Jury Trial was requested.

"Genuine" Issues of Material fact(s) Exist.

Necessity of affording leeway for Pro se in litigation.

Citizens have a right to present evidence (including oral and other forms) up to the moment of actual trial.

Summary Judgment deprives citizens' constitutional right to trial

Was the lower court's decision, ruling and order for payment of costs proper?

STATEMENT OF CASE

This case concerns Shelter Valley Road User's Association's (or, "SVRUA") action by which it successfully sought to quiet right, title and interest on an easement for use of a road (particularly being, "Shelter Valley Dr.", or, "the subject road") that traverses a portion of the Shelter Valley North (or, "SVN") subdivision. The subject road has, since its creation in the early 1980's, been used by Russell family members; not only for access to and from two lots owned by the family– one within the SVN subdivision, and the other within the adjoining South Shelter Valley subdivision (or, "SSV"), but more significantly, for accessing additional property owned by the family located outside of and wholly separate from said subdivisions, on neighboring Section 17 ("Section 17 properties") (noting: this route involves a reciprocal right-of-way easement (or, "reciprocal agreement") entered unto between the State of Montana/DNRC and Bill Russell Sr. (now deceased), Anne Russell (his widow), and appellant William Russell ("Mr. Russell") which was created in 2003, and incorporates a dirt road travelling from Section 17 North, thence East across a portion of State-owned land on Section 8, then traversing onto and over the family's SSV lot in Section 9 and ending at Shelter Ridge Rd. in SSV). Ownership of the two Shelter Valley lots correspondingly include express easements agreements for use and travel over

SVN's roads, including the subject road. The SVRUA's position is that Russell family members may not continue using the subject road to access Section 17 by way of the subject road then over their SV lots; *unless*, Russell family members owning the 17 parcels in Section 17 agree to become members of SVN's, SVRUA – thus requiring $1000.00 be paid upfront by each lot owner/per lot owned in Section 17, then upon any future development of parcels owned in Section 17, another $1000.00 will be required to be paid to the SVRUA by parcel owner prior to beginning development. Mr. Russell contends this action stems from a dispute incurred between a member of the SVRUA and Don Russell (brother of Mr. Russell) which developed during Don's alleged attempt at clearing brush/overgrowth from access to a portion of a (separate) easement held existing on the SVN lot. SVRUA however, alleges that this action stems from SVRUA's Director, Duane Anderson, in August 2018, having "noticed the GIS maps depicting "Bill Russell Way"' (*Aff. Of Duane Anderson ¶14*) [a private road officially named by Flathead County after petition to do so was made in 2008 by Russell family members following the 2007 passing of Bill Russell Sr.] which thereby connects the family's SV lots by way and incorporation of the route (described above) of the reciprocal agreement with the State of Montana, to Section 17 – and particularly ending on one of the lots owned by William Russell).

All defendants to the underlying action, save for appellant, were collectively represented by counsel ("Defendants 1", or "Def. 1"). Def. 1's Answer and Counterclaims filed on July 2, 2019 (see Docket #14), presented the claim of Implied Easement rights to use the subject road; Russell's (or "Def. 2") via his self-represented filings, presented the court with multiple claims of easement-right theories in support of the family's past and continued use of the subject road – including: prescriptive, implied, easement by use and quasi-easement. Mr. Russell in his answer, declared additional affirmative defenses including, latches, equitable estoppel, waiver and statute of limitations. SVRUA filed its motion for summary judgment against Def. 1 – Mr. Russell (Def. 2) was not privy to and was excluded from said motion. Prior to any ruling on SVRUA's MSJ, all parties had been scheduled to and did arrive for the court-ordered mediation/settlement meeting held in Whitefish, MT; including Mr. Russell, *twice*. Once, the day prior to the actual meeting date after having been emailed the incorrect date by the mediating attorney's office – which thus, after driving 6 hours (one-way) to attend that non-occurring meeting, caused him to incur additional costs of staying in a hotel overnight in order to attend the next-days, actual meeting. Mr. Russell, as the court ordered, did present himself at the mediation/settlement meeting – made certain it was known he did show up as ordered, just didn't waste any more of his time in staying for its duration. Doing so purely to satisfy the court after, and despite

having previously informed the mediating attorney and counsel for SVRUA that he had no desire to "settle" – and being self-represented, arguing his own case, for which his "side" of the matter had yet to even be determined/decided/declared or even considered by the court; which in hindsight, makes the "layman" or pro se wonder, why? Such effort and action goes unrecognized by the court. Opposing counsel even attempting to make the fact that Mr. Russell did not stay for the duration of the (actual) mediation hearing some major penalty-earning matter for the court's consideration of its MSJ briefing. What time and again seems consistent being pro se, is a summary denial of constitutional rights. Appellant has stated on record, many times in this same and lower Court, suffering from A.D.D., having to put in writing, a defense or explanation of events is brutally grueling. And the pro se is not being compensated for his time in making a poor attempt at doing so. This Court and the lower is familiar with appellant and his recent legal-plight; why must it be necessary to have all events, claims or defenses restated on every pleading? Especially every sequential pleading or brief in the same action in order for its rights or claims to be maintained, recognized, validated, considered and/or enforced? The original defendants in this action are one family, the Russell Family; defenses or rights claimed by one are inherently the same as and should be recognized for being applicable to all. Pro se are (according to writ) to be afforded a certain amount of leeway. Yet as the record between this and the lower court

shows over the last three years, it would appear not to be the case. In this and each matter, (I) Mr. Russell has requested an actual trial for recognizing my literary shortcomings and thus knowing the necessity of being able to present evidence and explain matters to a jury - in person – as in this case up to the actual trial. Yet as in each matter before, a summary ruling is made despite there being genuine issues of material fact. If any side has acted according to tactics, it should be determined to be opposing counsel. They have conflated and confused matters with various maps and "overlays" of maps when the matter is simple. My father bought 320 acres in Section 17 in the 1960's. We (the Russell family) used then existing trail/roads known as White Basin Trail system to travel to and from Airport Rd and Section 17. Twenty years later, approximately, the land over which the trail system existed, was sold to developers and ultimately became the Shelter Valley subdivisions. As lots were developed, the trail system no longer was available and new, actual paved roads were put in. Since that time, our family has been using the most efficient routed roads in the subdivisions, including and being specifically the subject road. It matters not the size of our family cemetery on our property, it matters not how often we elect to go and utilize our Section 17 properties or if we live in or out of state. What matters is my father/our family only purchased the SV lots for continued access to Section 17. By purchasing the SV lots, we gained easements including that over the subject road to our SV lots. To ensure passage

from the SV lots to Section 17, myself, my father and his widow in 2003 entered into reciprocal road use right of way easement agreements (which have since been legally named as "Bill Russell Way") providing us with legal access from the SV lots, over and across abutting State Land then down onto our Section 17 properties. SVRUA and the subject road has by their own admission, existed since some time in the 1980's; my family's SV lots were purchased in the 1990's; "Bill Russell Way" was named in 2008; thus… SVRUA has had ample time and it would be expected of them prior to 2018, to have had, exhibited or expressed some "interest in keeping up with changes in SV Lot ownership and updating [their] membership directory" (Aff. Duane Anderson ¶14), or performed other expected Road Users Association duties, as forms of due diligence owed to its members – which would have caused them to be aware of Bill Russell Way and the fact of matters long before now. Thus is the claim of statute of limitation and or laches. The judge on her Final Judgment and Order however, essentially made no "ruling". Assumedly because of the pro se status..? There was no explanation of reasoning or legal determination – it was just as it is titled…"summary". Why does pro se have to accept.. after spending hours and grueling hours researching and creating briefs and pleadings, in addition to the stress, loss of sleep, travel time and costs to file briefs (when attorneys can e-file) incurred in this day and age … in addition to the loss of property interests being ultimately taken by the court and not even receive

even a simple, but logical explanation of the court's reasoning/ruling/finding? And as an additional slap to the pro se, who cant afford an attorney to begin with, then be ordered to pay attorneys fees on such a frivolous shake down of an action as this?

STATEMENT OF FACTS

Despite it being uncontested that: the family's 320 acres in Section 17 have been in the Russell Family since the 1960's (more than twenty years prior to any planning or existence of either Shelter Valley subdivisions); only a system of "old Jeep trails" and "logging roads" existed over land that has since become SVN and SSV subdivisions; development of SVN and SSV has resulted in most of those trails no longer being usable or suitable for thru-vehicle travel - as land was divided up into portions which became private lots now known as SVN and SSV subdivisions; incrementally from the 1980's, the subdivisions were developed and as part in par, paved roads were created and being laid and thus, efficient routes were implemented – including the subject road; as incremental development began, Bill Russell Sr., solely intended to continue and ensure the family's most efficient and legal access to Section 17, and for those reasons alone, purchased the two SV lots, both which abut State Land just North of Section 17; Thus, through this

action, SVN, by proxy, attempts to regulate private property owner's permissive use of property rights – which constitutes trespass.

SUMMARY OF ARGUMENT

SVRUA Members have had a duty of due diligence, for many years before now, to be(come) aware of/by whom and/or how/if its "subject road" has/is being used. It is uncontested, no SVRUA member has ever had any issue with, nor have they ever noticed Bill Russell traversing its "connector road" (aka "subject road", or "Shelter Valley Rd.") in order to access his or any of his family members' Shelter Valley or "Section 17" properties. It is uncontested, Russell Family Members have been traversing land now considered a part of "Shelter Valley" subdivision(s) for many years prior to and since, either subdivisions' creation/development or existence.

It is undisputed that Bill Russell, Sr.'s sole reason for agreeing to purchase lots (now belonging to Don and Gwen Russell) in the Shelter Valley subdivision(s) was to ensure the Russell Family Members legal, ease of access to Section 17 properties owned by the Russell Family; which, by incremental development of the

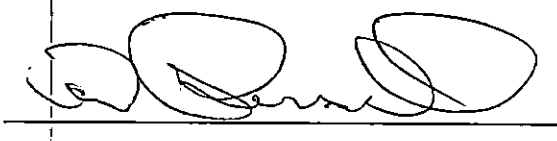
then planned subdivisions, would otherwise become inaccessible or become much more difficult to access,

ARGUMENT

Appellants stands by and reincorporates its submitted briefs and pleading(s) heretofore made in the record.

CONCLUSION

For reasons presented, appellant respectfully requests the Court overturn the lower court's order and judgement and/or remand for a jury trial in order that pro se appellant be able to verbally present all available evidence before a jury of his peers by which he requests and has requested all along to be judged by. Lastly, that the order for appellant to pay costs and fees for SVRUA be nullified and appellee take nothing.



William M. Russell, Appellant

CERTIFICATE OF SERVICE

I certify that on November 16th, 2020, I mailed an actual paper copy of the preceding document by prepaid U.S. mail to the Clerk of the Montana Supreme Court and the following:

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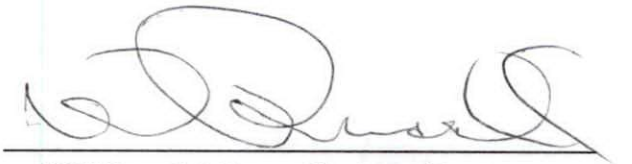
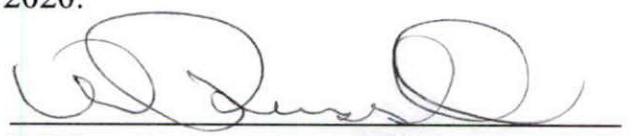


William M. Russell, Appellant, pro se

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 16(3) of the Montana Rules of Appellate Procedure, I certify that this Motion is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced; and the word count calculated by Microsoft Word 2010, is not more than 1,250 words, excluding certificate of service and certificate of compliance.

Dated this 15th day of November 2020.



William M. Russell, Appellant, pro se