

ORIGINAL

FILED

07/28/2021

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 20-0465

DA 20-0465

In the Supreme Court of the State of Montana

SIEBEN RANCH COMPANY,
Plaintiff-Appellee,

FILED

JUL 28 2021

Bowen Greenwood
Clerk of Supreme Court
State of Montana

v.

RANDALL G. ADAMS, a/k/a RANDY ADAMS, a/k/a
RAY ADAMS; and LEE MCDONALD
Defendants-Appellants.

Appeal from the Montana First Judicial District Court
Lewis and Clark County
Hon. Mike Menahan, CDV-2019-1539

**APPELLANT ADAMS OPPOSES APPELLEE'S
MOTION TO CORRECT/AMEND OPINION**

Jesse C. Kodadek
WORDEN THANE PC
321 W. Broadway, Ste. 300
Missoula, Montana 59802
(406) 721-3400
jkodadek@wordenthane.com

Attorney for Appellee

Randall Adams, *pro se*
1650 S. Casino Drive #100
Laughlin, Nevada 89029
(406) 390-4040
acr_adams@msn.com

Lee McDonald, *pro se*
One Hughes Center Drive #902
Las Vegas, Nevada 89169
(702) 750-0297
lemcdonald@msn.com

Sieben Ranch's Motion to Correct/Amend Opinion is opposed by appellant. The purported easement mentioned three times, in paragraphs 6, 16, and 19 of the Opinion, in terms of access, is correct.

It is self-evident that Sheriff Brian D. O'Connell had a perpetual easement when he petitioned the Board of County Commissioners (BOCC) along with Sieben Ranch for the abandonment of the dedicated public highway in 1950. A dedicated public highway cannot be abandoned unless all private owners therein have a perpetual easement for access. See, Section 60-2-107, MCA

The 1996 transaction between O'Connell Ranch / Sieben Ranch and FWP fails to take into consideration an essential party to the transaction. The lands were restricted by a statutorily protected easement in the public.

The intent of the language in four different deeds recorded between 1926 and 1950 (also set forth in Sieben Ranch's underlying title), lends itself to no other interpretation:

'the lands hereby conveyed being subject, however, to an easement in the public for any public roads heretofore laid out or established, and now existing over and across any public roads heretofore laid out or established, and now existing over and across any part of the premises.'

The 'easement in the public', and the BOCC dedicated public highway was in existence and deemed valid when Sieben Ranch submitted to the jurisdiction of the BOCC in 1950 and petitioned for abandonment.

The circumstances in place in 1950 and the petition for abandonment has not been addressed by the Supreme Court and is evidence the Supreme Court missed. The affect has a direct bearing on the validity of Lyons Creek Road as a dedicated public highway from near Interstate 15, through Section 10, T. 14 N., R. 5 W. to Herrin's game farm in upper Lyons Creek. The Opinion map from public records show the dedicated public highway to section 5, T. 14N, R. 5 W. That is makes sense based upon Herrin and O'Connell related through marriage.

In the Opinion on page 13 & 14, at 17, the Supreme Court deletes a word that alters the effect of the easement and the supposed intent. The Supreme Court's misnomer does not change the easement, its perpetuity, or intent.

The court must strike the following:

Appellants 'do not own any land burdened by the Conservation /Easement nor are they a body politic holding the easement' (Page 4 of Sieben's Motion to Correct/Amend Opinion).

The Opinion 'taking appellant's title' is based upon a misrepresentation:

Although required by the O'Connell Easement, Adams and McDonald neglected to notify FWP within thirty days of their purchase.

Notice was given over 100+ — days in advance of purchase. The Notice to FWP was provided by seller's attorney Tom Budewitz on July 11, 2018.

(See Ex. A) Accordingly, the court must strike the statement:

Adams and McDonald cannot enforce the Conservation Easement and their access is limited to the terms of the Conservation Easement, which is only during hunting season.

See: Lyons Creek Conservation Easements, and Appendixes, showing the road landowners can travel, and the CE limitations of hunter and public access. [does not read access only during hunting season for landowners]

The Court's Opinion is also based upon the following allegation:

and also conducted activities inconsistent with the terms of the O'Connell Easement, including installing a gate on Sieben Ranch property and making improvements to Sieben Ranch property without permission from Sieben Ranch or notification to FWP as required by the Conservation Easement. (See Ex. B)

See: LANDOWNER'S RIGHTS, Pg. 6, Clause 6 of the Lyons Creek O'Connell Ranch Conservation Easement, for clarification. Landowner rights set forth in the Conservation Easement for O'Connell Ranch reserve a homesite, utilities, access, and other uses; Sieben Ranch signed a document to that affect.

The Supreme Court overlooked evidence in the file. The petition for abandonment in 1950 is an example.

The concealing of adjudicative evidence from the public violates

Article II, Section 9 of the Constitution of Montana:

Section 9. Right to know. No person shall be deprived of the right to examine documents or to observe deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

The Order from the District Court dated August 7, 2020, declaring Lyons

Creek road private is based upon a viewpoint that on April 19, 2021, was refuted by Sieben Ranch's counsel. (Pg. 6 of Appellee's Response Brief)

Nobody found the petition to create the road; there is no record of the county commissioners appointing viewers or receiving their report; and there is no record of the county commissioners ever formally declaring Lyons Creek Road as a county road.

The District Court judge based the Order on this opinion and deemed the opinion:

"The weightiest evidence of this fact is the 1961 letter from L & C County Attorney Hanrahan." "The records in this Courthouse indicate that the Lyons Creek road is, and has been since before 1900, a county road ..." There is no record that this county road (to what is now the Sieben Ranch gate for its length) has ever been abandoned and is therefore the above-described portion of the Lyons Creek road was and is a county road."

The public records indicate Lyons Creek Road a dedicated public highway to B. H. Barnes's SW4 of Section 10, T14 N, R05 W, and from there to Herrin's game farm. The map submitted with the Supreme Court's Opinion, indicate section 5. This is further supported as the O'Connell's, related to Herrin by marriage, subsequently acquired sections 5 and 31. Brian D. O'Connell lived with Herrin.

Was the Courts confused?

Location of gate:

In 1926. W. V. Barnes lived next to the Sieben gate, S13, SE4, T14 N, R05 W.

[November 22, 1926. Deed Record No. 90, Page 637, NP Railway Co.

Grantor to William Vestal Barnes Grantee, T14 N, R05 W, N1/2, section 9, sections 11, and 13.]

The lands hereby conveyed being subject, however, to an easement in the public for any public roads heretofore laid out or established, and now existing over and across any part of the premises

Location of public highway dedication:

And in 1923 B. H. Barnes lived in SW4, S10, T14 N, R05 W.

[1919 Patent Book 6, Page 589 To Secure Homesteads to Actual Settlers on Public Domain U. S. to Bernard H. Barnes, SW ¼, Section 10, T14 N, R05 W.]

[In 1923, is the only land owned by B. H. Barnes that touches Lyons Creek Road, is the SW4 of 10-T14N-R5W, located 3 miles above Sieben Ranch gate.]

Dated July 28, 2021



Randall G. Adams. pro se

Word Count

The undersigned hereby certifies that the body of appellants opposition to appellees motion to correct/amend contains less than 1,250 words as calculated by Microsoft Word.



Randall G. Adams, pro se appellant

Certificate of Service

I hereby certify that on the 28th day of July, 2021, a true and correct copy of the foregoing was duly served, postage prepaid, on the attorneys of record as follows:

Jesse Kodadek

Worden Thane PC

321 West Broadway, Suite 300

Missoula, Montana 59802

Attorney for Appellee

Lee McDonald

One Hughes Center Drive #902

Las Vegas, Nevada 89169

Pro se Appellant



Randall G. Adams, pro se Appellant

THOMAS A. BUDEWITZ

ATTORNEY AT LAW

406 N. PINE - TOWNSEND, MONTANA

EXHIBIT A

PHONE (406) 439-4919

EMAIL: TBude30095@aol.com

July 11, 2018

Administrator
State of Montana
Department of Fish, Wildlife and Parks
PO Box 200701
Helena, MT 59620-0701

Re: Conservation Easement - O'Connell Ranch (Lyons Creek)
L & C County 44289

Dear Sir or Madam:

Pursuant to the terms of paragraph G., Notice to the Department, of the above referenced conservation easement you are hereby notified that Brian O'Connell intends to sell the following described property to the below named buyers:

DESCRIPTION:

All of section 31, Township 15 N, Range 5 W; all of section 3, Township 14 N, Range 5 W; and, all of section 5, Township 14 N, Range 5 W, Lewis and Clark County, Montana.

BUYERS:

Randy Adams
2700 Alexandra Rd.
Billings, MT 59105

and

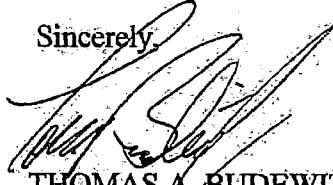
Lee McDonald
PO Box 4311
Bellingham, WA 98227

As tenants in common

I have enclosed a copy of the Buy-Sell agreement which provides for a July 30 closing date. The parties understand that the closing date is less than 30 days from this notice and have agreed that the closing shall be extended to a date not less than 30 days from the date of this notice.

Please address all communications regarding this matter to me.

Sincerely,



THOMAS A. BUDEWITZ

cc: Brian O'Connell
Randy Adams/Lee McDonald
Helena Abstract & Title Co.

EXHIBIT B

Road Notification 7/24/2019

From: ACR Adams <ACR_Adams@msn.com>

Sent: Wednesday, July 24, 2019 10:58 PM

To: League, Kevin <KLeague@mt.gov>

Cc: Sika, Jenny <jsika@mt.gov>; Burt, Howard <hburt@mt.gov>; Northrup, Rick <rnorthrup@mt.gov>;

ACR Adams <Acr_adams@msn.com>

Subject: Re: Road Construction - Site Visit

Kevin

Received your email. I'll get the requested information to you next week. Our goal is to improve the road access for the benefit of the CE as right now because of road conditions people are driving around mud holes and tearing up the road because of lack of maintenance Also the road to section 3 has not been traveled in several years this is the section that has the resident site for a home. The other main road stops right now at the east side of section 5 account of the bridge is out because of that we can not reach the rest of our property in section 5 and also our property in section 31

When we put the bridge back in there will be a locked gate at the bridge only for authorized owners to travel with a vehicle. The parking area will be left for hunters and walk in only A few of the secondary roads will be cleaned up but again no unauthorized vehicles allowed

P.S

I forgot that in section 3 we are looking at building a road to the top of the property as now there is no access to the top half of property

Please consider this as our official request and I'll get a map to you the first of the week

Thank You

RandyAdams

406-390-4040

2700 Alexander Road

Billings MT 59105

ACR_Adams@man.com

Sent from my iPhone

On Jul 24, 2019, at 1:27 PM, League, Kevin <KLeague@mt.gov> wrote:

Thanks Randy,

We would appreciate if if you could provide in writing your plans, including if possible a map that indicates the location of the roads that will be worked on. In particular we are interested in which roads you plan to work on, to what degree and level the roads will be improved/constructed and where new

road(s) or bridges(s) are to be built. Please also include the purpose(s) of the road work/construction. Paragraph G. of the Conservation Easement requires a written notification from you, 30 days in advance of construction, especially for the new road portion. I recognize that there have been various conversations with FWP staff regarding your plans. However, it would be helpful to have your plans summarized in written form so that we can ensure that everyone is on the same page and that your plans are in accordance to the CE. If you would like to share your plans via email, that is fine. Otherwise, my address below will be a good place to mail or drop off.

Appreciate it,
Kevin

Kevin League

Conservation Easement Stewardship Manager
Lands Unit

P.O. Box 200701
Helena, MT 59620-0701
Ph: (406) 444-3762