

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court No. DA 21-0426

FLYING T RANCH, LLC, a Montana limited liability company,

Plaintiff and Appellee,

v.

CATLIN RANCH, LP, a Montana limited partnership,

Defendant and Appellant,

MEAGHER COUNTY BY & THROUGH ITS COMMISSION,
SCOTT JACKSON, LYNN JACKSON, DEBRA WILLIAMS,
LISA ANDERSON, BERT WILLIAMS & CONNIE HIX,

Defendants.

CATLIN RANCH, LP, a Montana limited partnership,

Cross-Claimant and Appellant,

v.

DEBRA WILLIAMS, LISA ANDERSON,
BERT WILLIAMS & CONNIE HIX,

Cross-claim Defendants and Appellees.

APPELLANT, CATLIN RANCH, LP'S, OPENING BRIEF

On Appeal from the Fourteenth Judicial District Court, Meagher County
District Court Cause No. DV-19-5
Honorable Brenda R. Gilbert, Presiding

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STATEMENT OF THE ISSUES

1. Did the district court err in granting a preliminary injunction?
2. Did the district court err when it included parties in the preliminary injunctive relief who had neither moved for, nor been joined in, such relief?
3. Did the district court err in broadly ruling on the merits of the case rather than restricting its Findings and Conclusions to those necessary to determine whether a preliminary injunction should, or should not, be granted?

STATEMENT OF THE CASE

This is an appeal from the *Findings of Fact, Conclusions of Law, and Order* entered by the district court on August 2, 2021, which granted Appellee/Plaintiff's preliminary injunction motion.

STATEMENT OF THE FACTS

The case before the district court surrounds questions of whether an approximately 1.1 mile stretch of road, referred to as the Moss Agate Road or the Moss Agate Spur ("MAR"), is a valid county road, whether the same has been abandoned, and whether Plaintiff/Appellee, Flying T Ranch ("FT") has a legal access right to utilize the same. *Complaint*, 5/31/19, CR1; *Answer*, 8/16/19, CR24; *Amended Complaint*, 8/13/20, CR55. The stretch of road in question is a portion which branches off Highway 89, in Township 7 North, Range 7 East, Meagher County, at Section 15, and runs through Sections 14 and 11, on and across

Defendant/Appellant, Catlin Ranch LP's ("Catlin") property. *Def.'s Answer to Pl.'s Mot.*, 2, 7/17/19, CR7. MAR ultimately intersects with the old White Sulphur Springs ("WWS") to Livingston Road No. 19 ("County Road No. 19"). *Id.* MAR runs through an area containing corrals, fences and holding areas for Catlin's extensive cattle operation. *TRO Answer*, 12, 13, CR7. Catlin keeps a gate across MAR, in Section 15, which limits/prevents access across Catlin ground. *Id.* Catlin has kept the gate locked and unlocked, at times, since 2003, when Louise Rankin Galt transferred title to Catlin. B. Galt, Tr. 188:20-189:25, 4/30/21.

FT purchased Section 25 of Township 8 North, Range 7 East, Meagher County, Montana, in April 2014 ("Property"). *Complaint*, ¶7, CR1. FT obtained title insurance at the time of purchase, which did not insure a specific access route. *Stay Mot.*, 4, 7/17/19, CR8; *Stay Reply Br.*, 6, 8/19/19, CR21. Section 25 shares borders with the State of Montana, USDA Forest Service, CJS Ranch, LLC, and a corner with Section 35, owned by Scott and Lynn Jackson (two of the other named defendants, "Jacksons"). FT purchased Section 25 from Bert and Debra Williams, Connie Hix, and Lisa Anderson (joint owners of nearby property, collectively "Williams") for the purpose of having a vacation spot where FT members and family could also hunt. Timbrook, Tr. 251:4-24, 1/14/21. An area map (formulated by Catlin's expert, surveyor Barney Hallin), showing the sections, respective

ownership, easements of record, and roads is part of the record as hearing Exhibit C96.

In 2013, Jacksons granted an easement to Williams, providing Williams a non-exclusive, perpetual easement starting in Williams' Section 5 and extending over and across Jacksons' property in the northern half of Section 2 and into Section 35, to provide access to Section 25, the land now owned by FT. ("Williams-Jackson Easement"). Hr. Ex. C19. Williams also applied for, and were granted, from the State of Montana, authorization to expand the scope of their existing easement with the State, in Section 36, to allow for one residence. *Id.* The Williams-Jackson Easement was the access route to Section 25, as advertised by Williams in their sales brochure for that parcel, and does not cross Catlin property or use MAR route. Hr. Ex. C19, C81.

In April 2014, when FT purchased the Property, no residence existed thereon. Williams, Tr. 101:17-23, 4/29/21. The Property is not FT's primary residence, but a recreational holding for its out-of-state members. *TRO Answer*, CR7. Starting in summer 2014, FT constructed a cabin on the Property, which was usable in that year. P. Maurer, Tr. 130:19-23, 1/13/21; Timbrook, Tr. 261:4-14, 1/14/21. In June 2014, FT and Catlin had their first confrontation involving MAR use. *Aff. Timbrook*, 6:22, 7/1/19. Ultimately, a Meagher County under-sheriff became involved and rendered an opinion that Catlin needed to allow FT access. *Id.*, 7:26. Based on the under-

sheriff's instruction, MAR gate remained unlocked, and FT utilized it to complete cabin construction in 2015. P. Maurer, Tr. 130:19-23, 1/13/21. During his testimony, the under-sheriff (Nicolaus Rouser) denied having a clear recollection of this incident, or what he discussed with title examiner, Angie Evans. N. Rouser, Tr. 137:7-13, 138:1-7, 141:5-11, 146:8-11, 147:15-21, 1/13/21.

FT used MAR for seasonal access to its recreational Property until fall 2017, when Catlin locked a gate across MAR preventing further use by FT. Timbrook, Tr. 271:21-24, 284:21-23. FT cut Catlin's lock in September 2017, but it was reinstalled as of October 2017, by Catlin. Timbrook, Tr. 309:20-310:4, 311:12-21. During this time, Catlin sought the advice of the then Meagher County Attorney who represented MAR was not a county road. *TRO Answer*, 4, CR7; Aff. Timbrook, ¶37, CR4. Williams presented this issue to, and sought the assistance of, the Meagher County Commissioners, on December 5, 2017, but the Commissioners have thus far done nothing. *Protective Order Answer*, 12-13, 4/13/21, CR119. FT was precluded from using MAR for recreational access from later 2017 until August 2, 2021 when the district court granted FT's motion for a preliminary injunction pending trial. *Order*, 9, 8/2/21, CR163.

From fall 2017, until August 2, 2021, FT accessed the Property not via MAR, but through alternative routes. Aff. Timbrook, ¶¶37, 39; Timbrook, Tr. 277:15-16, 286:11-16. In this regard, FT member Todd Timbrook, testified FT has two, 4-wheel

drive pickups that FT has used to get to the Property using the Williams-Jackson Easement route. Timbrook, Tr. 311:12-312:25, 330:20-25. Timbrook further acknowledged bringing a “crawler” to the Property via the Williams-Jackson route. *Id.*, Tr. 311:12-15, 19-21. Concern was expressed about being able to take a trailer over this route, but Williams testified such concern could be remedied with some work. Williams, Tr. 100:5-12, 4/29/21.

Approximately two years after being locked out, on May 20, 2019, FT filed suit against First American Title Insurance Company of Montana (“Title Company”) alleging the Title Company refused to uphold promises to pay for all road improvements and construction on the “North Route”, at an estimated cost of \$350,000. *Stay Mot.*, 3, CR8; *Opposition to Stay Mot.*, 12, 7/26/19, CR11. The North Route is not the road at issue in this appeal. Therein, FT further requested monetary damages (including punitive) against the Title Company on a policy valued at \$900,000. *Stay Mot.*, 3, CR8. The Title Company case is still being litigated by FT.

On May 31, 2019, FT filed suit against Catlin. *Complaint*, CR1. Over a month later, on July 3, 2019, FT moved for a temporary restraining order and preliminary injunction seeking an order prohibiting Catlin from interfering with FT’s use of MAR, and arguing the same was necessary to preserve the status quo and to minimize harm. *TRO Mot.*, 20, 7/3/19, CR4. FT’s motion does not name Jacksons

as opposing parties or request that interim injunctive relief be awarded against them. *Id.* The motion further does not request relief be granted in favor of Jacksons, Williams, or Meagher County (namely, the public). *Id.* FT's motion was not amended to add parties or requested relief, and none of the other named defendants joined in FT's motion or submitted their own motion seeking such relief.

Catlin objected to FT's motion and moved the district court to stay the proceedings pending the outcome of the Title Company case. *TRO Answer*, CR7; *Stay Mot.*, 3, CR8. Catlin argued that access and damages were all being litigated in the Title Company case, where damages are more appropriately addressed with the entity which has policy limits (\$900,000) for a claim. *Stay Reply Br.*, 8, 8/9/19, CR21. In seeking the stay, Catlin also indicated it did not object to the lower court granting interim access over MAR for propane delivery to the Property. *TRO Answer*, 5, CR7. The Title Company contends it negotiated and was willing to pay for easements over Moss Agate and County Road No. 19 on the North Route, but FT ultimately rejected these solutions. *Stay Reply Br.*, 6, CR21. The Title Company also claims it investigated access in the area and determined FT already had access rights over the old county road to the South and North, but not on MAR. *Id.*, 6-7.

FT objected and claimed its two lawsuits were sufficiently different as to warrant the instant case to not be stayed. *Stay Opposition Br.*, CR11. The district court, however, granted the stay, reasoning the case would only delay relief for FT,

not eliminate it, and that it could not “envision a fair” and “equitable trial going forward” until the Title Company case was concluded. *Stay Order*, 8, 8/30/19, CR25. The court also ordered that propane could be delivered via MAR in the interim, as arranged through respective legal counsel. *Id.*, 9. FT appealed and this Court reversed the stay, holding it was error for the district court to not first hold a hearing on FT’s preliminary injunction motion. *Appeal Ntc.*, 9/3/19, CR26; *Supreme Court Order*, CR39, 40.

The hearing on FT’s preliminary injunction started on January 13, 2021 but was stopped early on January 14, 2021 because of a COVID-19 exposure. *Court Minutes*, 1/14/21, CR87. The hearing resumed on April 29, 2021 and April 30, 2021. *Order*, 2, 8/2/21, CR163. The district court issued its order granting FT’s preliminary injunction motion on August 2, 2021. *Order*, III, CR163, attached hereto as Appellant’s Exhibit 1. The Order enjoins Catlin and Jacksons from interfering with FT’s use of MAR, and orders access over MAR to not only FT, but also Williams and Jacksons. *Id.* The Order further determines that MAR is a county road which has not been abandoned. *Id.*, ¶¶32-41, D-K, M-N, P-U, V-LL, MM, NN.

Nowhere in the district court record does FT assert it has been completely unable to access its Property since October 2017. FT concedes it has been precluded from using MAR since late 2017, and admits to having at least one other access route. *Aff. Timbrook*, ¶¶37, 39; *Timbrook*, Tr. 277:15-16, 286:11-16.

Catlin files this appeal asserting the district court's findings were clearly erroneous and its Order should be overturned as a manifest abuse of discretion.

SUMMARY OF THE ARGUMENT

The district court has broad discretion to grant a preliminary injunction. However, the lower court abused this discretion when it granted FT's motion, because FT failed to meet its evidentiary burden. The lower court further erred when it incorrectly determined the status quo period, and made sweeping determinations, and ultimate conclusions, on the underlying merits and issues of the case. Instead, the district court should have narrowed its Findings and Conclusions to only those necessary to grant, or deny, a preliminary injunction.

In this regard, while the district court must provide sufficient findings and conclusions to support its order, those determinations must be tailored and specifically limited to the issue before the court; namely, the temporary use of MAR. The district court is not authorized, and it is a manifest abuse of discretion, for it to issue a preliminary injunction order which includes dispositive determinations as to the underlying issues. *Porter v. K & S P'ship* (1981), 192 Mont. 175, 183, 627 P.2d 836, 840.

The district court order, in this case, far exceeded the findings and conclusions needed to support granting a preliminary injunction. The district court ironically states its duty is to "determine whether a sufficient case has been made to warrant

the preservation of the property or rights in status quo until trial, without expressing a final opinion as to such rights”, but then goes on to express final opinions on dispositive issues. *Order*, ¶¶32-41, D-K, M-N, P-U, V-LL, MM, 8/2/21, CR163. In contravention of legal precedence, the lower court expressly adjudicated and found that MAR is a county road, which was not abandoned. *Id.*, ¶¶U, NN. The district court also erroneously determined that FT has a true and active right to access the road. *Id.*, ¶NN. The court then further exceeded its discretion by granting not just FT full access on MAR, but also access to other parties who neither moved for, nor been joined as parties, for such relief. *Id.*, III.

In this regard, the issue before the district court was interim/temporary use of MAR by FT, based on FT’s motion for a preliminary injunction. The only party in that motion requesting relief was FT. No other parties joined in that motion or filed their own motion seeking the same or similar relief. The lower court abused its discretion, and deprived Catlin of notice, and therefore due process, when it granted temporary use of MAR to not just FT, but also other named defendants to this action; specifically, Williams and Jacksons. *Order*, III. Additionally, by erroneously declaring MAR to be a valid unabandoned county road, the district court in essence also granted unrestricted access to the public. *Id.*, ¶¶U, NN.

The district court erred and abused its discretion by issuing the preliminary injunction in contravention of existing applicable statutes and case law, including

failing to correctly apply the law to the facts, and issuing dispositive findings and conclusions outside the preview of the extant motion. This Court should therefore reverse the Order in total and remand back to the district court for further proceedings.

STANDARD OF REVIEW

This Court reviews the district court’s findings to determine whether they are clearly erroneous and its conclusions to determine whether they are correct. *BAM Ventures, LLC v. Schiffrman*, 2019 MT 67, ¶7, 395 Mont. 160, 164, 437 P.3d 142, 144. Further, this Court reviews a district court’s grant or denial of injunctive relief for a manifest abuse of discretion. *Jefferson Cty. ex rel. Bd. of Comm’rs v. McCauley Ranches*, 1999 MT 333, ¶6, 297 Mont. 392, 994 P.2d 11.

ARGUMENT

I. The district court erred when it enjoined Catlin from controlling MAR with a preliminary injunction because FT failed to make the requisite showing for a preliminary injunction to issue.

Statutorily, there are three relevant circumstances which may justify the issuance of a preliminary injunction, all of which require a showing of some level of harm. Mont. Code Ann. § 27-19-201; *BAM*, 2019 MT 67, ¶16. Upon the requisite showing, a court may issue a preliminary injunction to maintain the status quo pending trial. *Flora v. Clearman*, 2016 MT 290, ¶21, 385 Mont. 341, 347, 384 P.3d 448, 453. The “status quo” is the last actual, peaceable, uncontested condition which

preceded the pending controversy between the parties. *Id.* An injunction should not issue when monetary damages provide an adequate remedy to the movant. *Shammel v. Canyon Res. Corp.*, 2003 MT 372, ¶17, 319 Mont. 132, 138–139, 92 P.3d 912, 917.

Here, the district court improperly issued a preliminary injunction because: (1) any access issues claimed by FT can be remedied by an award of monetary damages; (2) FT failed to make the requisite showing required under Section 27-19-201 because FT failed to establish there was any valid immediate threat and/or continuation of an irreparable injury or harm, as such, the court should also not have even considered “status quo”; and (3) the district court erred in its determination of status quo.

A. The district court erred when it issued a preliminary injunction because FT can be made whole with monetary damages and FT has already filed a separate suit to recover such monetary damages.

Generally, injunctive relief is not granted where an action for monetary damages will afford an adequate remedy. *Shammel*, 2003 MT 372, ¶17. Equity should not interfere by way of injunction where the law can furnish all the relief to which the complaining party is entitled, as by monetary damages. *Boyer v. Karagacin* (1978), 178 Mont. 26, 31, 582 P.2d 1173, 1177. FT is actively seeking monetary damages in its Title Company suit (filed prior to the case at bar) to make itself whole with monetary damages, including those claimed costs it incurred for

working on MAR. *Stay Mot.*, 3, CR8. FT's access issues can also be cured with monetary damages to improve any of the three other routes available to FT, and which do not infringe upon MAR. Hallin, Tr. 8:7-10, 4/30/21.

The Title Company contends it negotiated and was willing to pay for easements over the North Route, but FT rejected the offer. *Stay Motion*, 3, CR8; *Stay Reply Br.*, 6, CR21. The Title Company also claims it investigated access in the area and determined FT already had access rights over the old county road to the South and North (which Catlin does not dispute), but not on MAR. *Stay Reply Br.*, 6-7. An additional solution is to take steps to fully utilize the Williams-Jackson Easement, similar to what had already been done by Williams to expand access in Section 36. *Aff. Hallin*, ¶¶5-7, 7/8/19.

The monetary damages that FT is already seeking are sufficient to remedy FT's access concerns and claimed MAR improvement costs, and the fee to expand FT's existing easement is logical and sensible and can be accomplished with money. Logically, if monetary damages were insufficient, FT would have joined all present defendants in this case (including Catlin) into one cause; namely, the Title Company case. In any event, an injunction is not the proper remedy. This is particularly relevant when considering the fact that FT does not need to use MAR to get to the Property, it is just the preferred route for FT. Hallin, Tr. 8:7-10, 4/30/21; Timbrook, Tr. 277:15-16, 286:11-16.

B. The district court erred in issuing a preliminary injunction because FT failed to show sufficient evidence of harm or injury and thereby did not meet the prerequisite showing required under Section 27-18-201.

As referenced above, there are three relevant circumstances which may justify the issuance of a preliminary injunction. Mont. Code Ann. §27-19-201. All subsections of the preliminary injunction statute carry the purpose of stopping or preventing injury. Mont. Code Ann. §27-19-201. A great or irreparable harm is explicitly required in Subsection 2 and implicitly required in Subsections 1 and 3, to stop the continuance of, or to prevent, injury. Mont. Code Ann. §27-19-201; *BAM*, 2019 MT 67, ¶16. In all three sections a showing of harm is required. *Id.*

In *BAM*, this Court upheld a preliminary injunction to provide driveway access to a primary residence, because it was the only route to the home, and movants had established a prima facie case for a prescriptive easement based on 12 years of use. *BAM*, 2019 MT 67, ¶¶2, 16, 18. In the case at bar, MAR is not the only access to the Property, and FT admitted it had been able to get to the Property since 2017 when Catlin locked the gate and prevented further third-party access (who did not otherwise have permission) at that point. Timbrook, Tr. 286:11-16, 311:16-25. FT's Timbrook stated that on October 2, 2017, he was told by the Meagher County Sheriff John Lopp, who relayed this information via then county attorney DesChene (Durham), that FT did not have access through MAR. Timbrook, Tr. 318:12-19. Timbrook further confirmed FT "went behind William's house" and "through the

Williams property”, for access, and had brought a “crawler” to FT’s Property using this same route. Timbrook, Tr. 277:11-16, 311:12-15.

Prior to this, FT’s MAR use was from the middle of 2014 to fall 2017, and then not until August 2, 2021, when the Order was issued. *Aff. Timbrook*, ¶37; *Order*, III. Additionally, no one resides on FT’s Property, it is not a primary residence for anyone, and is only used sporadically throughout the year when FT members come in from out-of-state to recreate. In this regard, FT’s Timbrook said use was “maybe 3 times a year”. Timbrook, Tr. 251:1-9, 312:18-21.

Despite these facts, FT argued it will suffer “injury to its property, and the improvements on that property, absent access over” MAR. *TRO Mot.*, 11, CR4. FT’s Timbrook also claimed that without an injunction, FT would suffer “substantial interference” with its ability to use and enjoy the Property. *Id.*, 20; *Aff. Timbrook*, ¶¶40–41. This assertion is made even though all FT members live across the country in other states such as New Jersey. *TRO Answer*, 4, CR7. The lower court record and testimony further shows FT’s assertions are unsubstantiated.

For example, FT admitted it has been able to access the Property without using MAR, and has been utilizing alternative access routes since 2017. Timbrook, Tr. 286:11-16, 311:16-25. FT’s claims of injury to its property and improvements consist of it wanting to finish installing a pond. *Id.*, 275:2-3; *Aff. Timbrook*, ¶39. FT already built its cabin, including a well, heat, and solar power, along with access for

propane delivery to the Property as previously ordered by the district court in its stay order (and not objected to by Catlin). Timbrook, Tr. 275:16-17; *Stay Order*, 9, 8/30/19, CR25; P. Maurer, Tr. 120:1-6, 123:9-12, 130:22-23, 1/13/31. The desire to install a pond is devoid of grounds to support an injunction, or rise to the evidentiary standard of “harm”. *Stay Order*, 9. FT is not injured by Catlin precluding access via MAR, especially when the claimed injury relates to desired, but not necessary, land improvements to a remote recreational property.

Nowhere in any of the pleadings, or during testimony, did FT establish it could not access the Property, or that it is land locked without the use of MAR. FT merely wishes to use MAR because it is FT’s preferred route. FT is not injured if precluded from utilizing its desired ingress, and it has neither suffered, nor would it suffer, harm (irreparable or otherwise) had the lower court denied its motion. FT’s out-of-state members simply desire to change the historical long-term oral agreements between Catlin and its neighbors and invitees about MAR use.

In this regard, Dick Lyman, long time hunting outfitter (35 years) for Williams, Catlin, Jacksons, and Rostad (another area landowner), stated the area landowners had a “really good working relationship...understanding that if you needed to cross somebody, you were okay to do that, basically so long as you didn’t tear anything up or tear anything down.” Lyman Dep., 11:10, 12:16, 22:11-12, 24:12-20, 36:16-21, 3/24/21. Mr. Lyman relayed his belief that MAR was a private

ranch road with no public domain use. *Id.*, 33:9-10. Barry White, who rented Williams' property for hunting, stated he was certain he "asked and had permission" to use MAR. White Dep., 37:20-22, 57:9-15, 3/26/21. John Lesofski testified he was the Meagher County game warden for 25 years, with extensive training in ascertaining public and private roads. Lesofski, Tr. 164:9-12, 172:12-16, 17:21, 4/30/21. Mr. Lesofski, who is the current Meagher County Justice of the Peace, indicated that during his tenure, he had spent "lots of time" in the area and on MAR "usually in a trespass sense". *Id.*, 164:4-5, 22-25. He further testified he always assumed MAR to be a private road, and indicated if he saw an unrecognized vehicle parked at MAR, he would stop and make sure. *Id.*, 165:22-25, 171:13-14. Additionally, testimony showed individuals would call Catlin for permission to use MAR. Taylor, Tr. 155:13-25, 4/30/21.

Substantial evidence exists which shows FT has been able to reach the Property by other routes which do not include MAR. One of these was the advertised route to the Property in the sales brochure used by Williams when marketing this sale. B. Williams, Tr. 93:12-19; Hrg. Ex. C81. FT acknowledged receiving this sales brochure. Timbrook, Tr. 317:2-15. In this regard, the advertised route was not MAR but across Williams' property, and using an easement between Williams and Jacksons ("Williams-Jackson Easement"). *Id.* This is the same route FT had been

using since 2017 when Catlin locked MAR gate. Timbrook, Tr. 286:11-16, 311:16-25.

Other routes include: the North Route on County Road No. 19 ending in Section 18, T7N R7E on Highway 89; and via the County Road No. 19 ending in Section 23, T7N, R7E, both of which provide access to the Property. *Aff. Hallin*, ¶¶11, 13, 7/8/19; Hrg. Ex. C96 (Hallin Map). John Lesofski also described being able to drive the Northern Route with his patrol vehicle. Lesofski, Tr. 168:12-18. FT has been using one or more of these routes to access its property since at least October 2017, when FT learned from County officials that it did not have legal access over MAR. *Aff. Timbrook*, ¶37; Timbrook, Tr. 311:12-21; Prot. Order Answer, 12-13, 4/13/21, CR119.

FT does not make any claims that it has been unable to get to the Property since 2017, but FT does admit MAR was not used during this period. *Aff. Timbrook*, ¶37. FT also admits there is at least one other route, which is not passable “at times”. *Aff. Timbrook*, ¶39. Such a characterization can be said of any Montana road. Ironically, FT’s expert, Tom Henesh, testified he could not reach the Property, not because of an issue with the Williams route, but because of too much snow being on Section 36. Henesh, Tr. 165:17-23, 4/29/21. This highlights how FT has access “issues” related to weather which have nothing to do with MAR or Catlin, and as such, FT would not get to the Property even if FT were able to use MAR.

FT also highlights other Property routes in its suit against the Title Company. FT's Title Company complaint references access via the "old county road to the South below MAR", and access through a neighbor's property, known as the "North Route." *Id.*, ¶¶50, 52, 53, 58, 59. Therein, FT also complains of the Title Company revoking a promise to pay for all road improvements and construction costs on the "North Route", not on MAR, showing the original plan/agreement between FT and the Title Company was to obtain an "unimproved easement on the Northern Route" and improve it as needed. *Id.*, ¶¶59, 60, 78. This provides more evidence that the Property is accessible by other roads and that using MAR was not the intended route but simply a more convenient one for FT. This also highlights how money damages can resolved FT's concerns.

In sum, FT failed to show legitimate, actual harm, and without this prerequisite, the district court erred when it granted FT's preliminary injunction, and then additionally erred when it considered, and ruled upon, "status quo".

C. The district court did not appropriately weigh Catlin's hardships against FT's inconveniences, and FT failed to establish estoppel.

When determining whether to issue a preliminary injunction, the district court must evaluate whether FT will possibly suffer irreparable injury before full adjudication and whether the balance of hardships favor FT. *Porter*, 192 Mont. 175, 183. The facts do not support the district court's conclusion that FT would suffer

more hardship than Catlin. As argued, and cited, above herein, FT desires to use MAR not because FT lacks access to the Property via other routes, but because FT likes the route better than any others. It is undisputed that between fall 2017 (when Catlin locked the gate) and August 2021, FT did not use MAR but was still able to utilize and access its Property, nonetheless. It is further without contravention, that no one primarily resides on the Property and FT being personally there is sporadic. FT failed to establish any viable hardship or actual harm it would suffer by not using MAR. Inconvenience to FT is not harm.

Conversely, Catlin has extensive agricultural and ranching operations in Meagher County (holding approximately 50,000 acres) and the main partner lives primarily on site. B. Galt, Tr. 174:19-21, 175:2-5, 4/30/21; Dep. B. Galt, 6:15-17, 4/1/21. This generations-held working ranch utilizes MAR and the surrounding area for a myriad of its cattle workings. W. Galt, Tr. 120:5-10, 126:10-16, 4/30/21. MAR is gated and has been for decades. B. Galt, Tr. 188:20-24. Dep. B. Galt, 22-23, 4/1/21. Catlin's ability to control access to, and have awareness of, occupants on its land is integral to not only its business operations, but also to protect its property from trespassers and potential hazards, such as, fire and cattle getting out onto the adjacent Highway. Dep. B. Galt, 24:24-25:14, 77:18-23, 84:2-10; Dep. W. Galt, 52, 4/2/21; Williams, Tr. 94:10-14; Jackson, Tr. 220:3-5, 4/30/21. MAR comes directly off Highway 89, which is a main travel way to White Sulphur Springs. W. Galt, Tr.

126:25-127:8. As a result of the district court's preliminary injunction order, now anyone (because the Court declared MAR to be county in its interim order) can exit Highway 89 to come onto Catlin ground via MAR.

Catlin has historically experienced issues with trespassers, damage due to fire, and cattle being on the adjoining highway, all of which show the necessity for Catlin to monitor and maintain its borders, fences, gates, and control those who access Catlin land. *Id.* Catlin has an extensive history of requiring third parties to call and get permission before coming onto Catlin ground; this includes access along MAR. Taylor, Tr. 155:13-20, 4/30/21; Lesofski, Tr. 166:11-21, 4/30/21; Jackson, Tr. 219:5-12, 220:13-15, 4/30/21.

In 2017, Catlin lost thousands of acres of trees and grass, as well as, miles of fencing, due to the negligence of a neighbor who caused a fire. Dep. Taylor, 58:19-59:17, 4/2/21; Dep. W. Galt, 52; Williams, Tr. 94:10-14; Jackson, Tr. 220:3-5. Catlin has historically participated in the State's Block Management Program, but Catlin allows hunters to only access on foot via MAR. Dep. B. Galt, 79:5-80:12, 4/1/21. Catlin's operations are tied to the land, and being of aware of and having the ability to control what occurs on its land and roads is integral to a safe and efficient business and living environment; whereas no one from FT lives in this State, let alone primarily on its Property, so opening access via MAR across Catlin ground creates a consistent and continued hardship to Catlin, not FT.

The lower court also erroneously concluded that FT has an easement by estoppel. *Order*, ¶¶V–Y, CC, CR163. There are six conjunctive elements required to establish estoppel by clear and convincing evidence, one of which is that the claiming party must have acted upon the other party’s conduct in “such a manner as to change [that party’s] position for the worse.” *Bache v. Owens*, 280 Mont. 106, 112-114, 929 P.2d 217, 221 (1998) (citing *Ducham v. Tuma*, 265 Mont. 436 (1994)). FT does not meet this requirement. FT has access to the Property and has admitted to such and FT has completed its cabin for its members and family to use when they come to recreate. Accordingly, FT’s position could not worsen by being precluded from using MAR.

Additionally, courts should not penalize persons who engage in “neighborly acts of courtesy and cooperation by permitting others to use their land. Ordinarily, the burden should be on the party desiring to acquire a nonrevocable right to use the land of others...[and] not ordinarily rest on the landowner giving permission....” *Restatement 3rd Property*, §2.10. A monetary award which would alleviate any found “injustice” to the claiming party should also be considered to defeat a finding of estoppel. *Id.* Testimony confirms Catlin engaged in neighborly accommodation to allow limited others to use MAR. Lyman Dep., 11:10, 12:16-25, 22:12, 24:18, 36:16-21, 3/24/21; W. Galt, Tr. 122:11-15; Taylor, Tr. 155:13-25. Catlin cooperated with the then deputy sheriff Rouser from mid-2014 to fall 2017, when it did not lock

its gate, but then exercised its valid property right to prevent access from that point forward. FT can be made whole with monetary damages, it is actively seeking such damages in a companion case against the Title Company, and there is no injustice to FT because it admits its access has not been precluded as a result of Catlin blocking MAR use. As such, estoppel (even a prima facie case) should not have been found, especially when this Court has determined that estoppel is not favored. *Bache*, 280 Mont. 106, 112-114.

FT argues some of the other routes are not always accessible. *Aff. Timbrook*, ¶39. FT does not, and cannot, however correctly allege it has been precluded from getting to the Property using routes other than MAR. *Timbrook*, Tr. 286:11-16, 311:16-25. Sporadically inaccessible roads are a fact of being in Montana and experiencing the weather in this State. This reality is a frustration and inconvenience, but it does not create a property right to the movant.

FT also complains that one of its alternate routes is longer than if it uses MAR. *Timbrook*, Tr. 312:3-9. Having to go a longer route is also merely an inconvenience, which does not equate to having a worsened position, or serve as an acceptable basis upon which to grant a preliminary injunction. *Ewan v. Stenberg*, 168 Mont. 63, 541 P.2d 60 (1975). By wrongfully granting access, Catlin in essence became the servient estate and as such, merits more protections under Montana law. *Ashby v. Maechling*, 2010 MT 80, ¶37, 35 Mont. 68, 76, 299 P.3d 1210, 1217 (stating implied

negative easements must be viewed with extreme caution because the servient estate owner loses the use and control of a portion of its property). The lower court failed to afford Catlin with this heightened standard. In sum, the facts and evidence fail to support the district court's determinations that FT would suffer more hardship than Catlin or that FT adequately established easement by estoppel (or necessity).

D. Even if this Court finds that the prerequisite showing of harm was established, the district court still erred by determining the last peaceable and uncontested period of time before FT filed its 2019 Complaint, known as the “status quo”, was between mid-2014 and 2017, and not between 2017 and 2019.

The function of a preliminary injunction is to maintain the status quo pending trial on the merits. *Porter*, 192 Mont. 175, 180; *Flora*, 384 P.3d 448, 452. The “status quo” is the last actual, peaceable, uncontested condition which preceded the pending controversy. *Porter*, 192 Mont. 175, 180; *Flora*, 384 P.3d 448, 452. FT claimed the status quo was when FT had utilized MAR without objection for “several years”. *Pl. 's TRO Mot.*, 10, CR4. The district court agreed, finding status quo was established by FT's “use of the access for approximately three years before this litigation commenced.” *Order*, ¶1MM, CR163.

The facts of this case, however, support a different conclusion about the correct status quo and show the lower court was clearly erroneous with how it defined this period. In this regard, prior to FT acquiring the Property in mid-2014, it is uncontested that no cabin existed thereon; as such, MAR could not have been

used to access a cabin (including the building time) prior to mid-2014. Williams, Tr. 75:15-18, 101:17-23. FT did use MAR sporadically from summer 2014 to fall 2017, but this occurred only because a deputy sheriff (who was called by Catlin to report a trespass) erroneously instructed Catlin to give FT access. Timbrook, Tr. 264:5-16. As of the fall 2017, however, Catlin locked the gate and FT used alternative routes from 2017 until August 2, 2021, to get to the Property. *Id.*, 277:15-16, 286:11-16. FT did not file suit against Catlin until May 31, 2019. *Complaint*, CR1. Accordingly, the period of time before litigation commenced was 2017 to 2019, during which time access on MAR was uncontested and peaceable between FT and Catlin. The district court ignored that two-year time frame, which immediately preceded FT filing suit. This was in error and not supported by the facts or evidence of this matter.

The court questions Catlin for not seeking “access” or filing suit against FT, stating Catlin instead “sat, watched and waited” while FT improved its property. *Order*, Z, CR163. The court neglects, however, to reference that FT used MAR for a short period of time from April 2014 to the fall 2017 and then was precluded, by Catlin, from any additional access until August 2021, when the Order was issued. Additionally, evidence was presented which shows that in 2017, Catlin reasonably relied on the representations of the then Meagher County Attorney that this was not a county road, that Catlin did not believe this was a county road, and that Meagher

County Commissioners never acted in relation to Williams' 2017 request to look into the matter and act. *Prot. Order Answer*, 12-13, CR119.

Evidence also shows that Catlin knew FT was in negotiations with the title company during this period of time for alternate access. *Stay Order*, 5. There were also negotiations between Catlin and FT during this time (in 2017 and early 2018) for granting permissive use on MAR to FT. Hrg. Ex. 101. Catlin therefore had no reason to file suit against FT, as FT was neither using MAR, nor making formal claims against Catlin (until FT filed suit in mid-2019).

Finding fault with the district court in this regard, is also supported by the fact that it incorrectly declared MAR to be a county road. *Order*, ¶¶M-U, CR163. Evidence shows the public had not been allowed on MAR for at least decades, since Catlin's predecessor (Louise Rankin Galt) owned the area. W. Galt, Tr. 122:23-123:18; Taylor, Tr. 155:13-20. It is also undisputed that Meagher County had not taken steps against Rankin Galt, or Catlin to enforce or claim MAR as being county. As such, status quo on MAR could not have been public use and the district court abused its discretion by finding MAR to be county and thereby placing public use within its definition of status quo.

The court's issuance of the preliminary injunction did therefore not preserve the status quo because it granted not only FT access, but also other parties (and the public) with access rights. When a preliminary injunction will not preserve the status

quo and does not minimize harm to all parties pending full trial on the merits, it should not issue. *Porter*, 192 Mont. 175, 183.

II. The district court erroneously granted MAR access to parties Williams and Jacksons, and declared the same to be County, thereby granting access to the public, even though only FT moved for the requested preliminary injunctive relief.

A court may order an injunction which shall “be binding only upon the parties to the action; their officers, agents, employees, and attorneys; and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.” Mont. Code Ann. § 27-19-105(4); see *Rice v. Lanning*, 2004 MT 237, ¶35, 322 Mont. 487, 97 P.3d 580. FT filed its preliminary injunctive motion specifically naming only Catlin as the party to which injunctive relief was sought. *TRO Mot.*, 1, CR4. No other parties to this action joined in FT’s motion or filed their own motion for temporary/interim injunctive relief.

In this regard, in its Answer to FT’s Amended Complaint, under Count X “Preliminary and Permanent Injunctive Relief”, Meagher County asserts it is without sufficient information so therefore denies FT’s claims in relation to: Catlin and Jacksons attempting to obstruct FT’s use of MAR; Catlin and Jacksons harming FT; that FT will suffer irreparable harm; that Catlin and Jackson will suffer no injury by FT’s use because FT and its predecessors, including the public have used MAR since the late 1800s; that FT will likely prevail on the merits, including assertions related to the public at large; and that FT is entitled to preliminary and permanent

injunctions restraining Catlin and Jacksons from interfering with FT's use, and the public at large. *Am. Complaint*, ¶¶129-133, 135, 8/13/20, CR55; *Def. Meagher County Answer*, ¶¶129-133, 135, 8/24/20, CR57. Meagher County has not amended its answer so its responses therein have not been changed. Meagher County also called no witnesses during the preliminary injunction hearing. Meagher County likewise did not move, by filing or orally at the hearing, to join FT's motion, or to be included in FT's requested interim injunctive relief on behalf of the County and/or the public at large.

Similarly, Williams answered the same portions of FT's Amended Complaint by stating as follows: "...these allegations are directed to Defendants Jackson and Catlin...". *Williams Answer*, ¶42, 10/22/20, CR65. Williams did not, at any time, seek to join in FT's request for temporary injunctive relief, nor did they affirmatively assert that they are entitled to, and/or should be, granted injunctive relief, temporary or permanent. Williams, not surprisingly, agrees with FT's overall position but that acquiescence should be questioned because Williams sold the Property to FT. This is also in direct contravention of Williams' own sales brochure for the Property which shows a different access route than MAR for whomever purchased the Property, and Williams' history of asking Louise Rankin Galt and Catlin for a written easement across MAR. Hrg. Ex. C-81; Williams, Tr. 102:13-25, 103:1.

Jacksons answer by pointing to the Williams-Jackson easement which provides access to FT, and denying those other allegations in FT's Complaint Count X which do not otherwise call for a legal conclusion. *Jacksons Answer*, ¶¶63–64, 9/24/20, CR59. Just like Meagher County and Williams, Jacksons did not file for their own injunctive relief, nor assert they were entitled to the same, or seek to join in FT's preliminary injunction motion or the relief requested therein.

Despite these facts, the district court improperly granted unrestricted access to MAR to Jacksons and Williams, ordering that they receive the combination or key if the gate is locked. *Order*, III, CR163. The district court also granted access to Meagher County, and thereby the public in general, when it stated MAR is a county road and has not been abandoned. *Order*, ¶¶M–U. That ruling had the effect of not only giving temporary access to the public, but also permanent access, because the court ruled on these underlying dispositive issues with its preliminary injunction. This was wholly in error and a clear abuse of discretion. Of note, with its Order, the court also essentially granted access through Jacksons' South half of Section 2, which is the route off MAR that FT would need to use to get to the Property; as such, Jacksons are now further burdened as well.

Montana case law states: “[I]t is a fundamental principle of our jurisprudence that it is only against a party to the action that a judgment can be taken and that the judgment is not binding against a stranger to the action. The same pertains where

judgment is awarded in favor of a nonparty.” *Warnack v. Coneen Fam. Tr.*, 266 Mont. 203, 207, 879 P.2d 715, 718(1994) (reversing an order awarding a prescriptive easement to a non-party); 46 Am. Jur. 2d *Judgments* §86; *Kessinger v. Matulevich*, 278 Mont. 450, 460, 925 P.2d 864, 870–871 (1996). Jacksons, Williams, and Meagher County did not seek, make an evidentiary showing, or even claim a right to preliminary injunctive relief; as such, they are not parties to FT’s preliminary injunction motion or the relief requested therein. Additionally, none of these parties have proven, or asserted, the necessary elements which might support such an award to each of them respectively; such as prima facie success on the underlying merits (particularly when their answers indicate denials to many of the specific allegations in FT’s Amended Complaint), harm, exigency, or need. The inclusion of Jacksons and Williams, along with the sweeping and dispositive designation about the public nature of MAR, are an abuse of discretion and contrary to Montana law.

By adding these parties in the Order, the district court also deprived Catlin of the mandatory notice of them seeking such relief (which they did not). Mont. Code Ann. § 27-19-105(4). This leaves Catlin devoid of due process and is tantamount to surprise and trial, or more accurately, an order, by ambush. The Montana Constitution states, “no person shall be deprived of life, liberty, or property without due process of law.” Mont. Const. Art. II, §17. Further, “notice sufficiently comports with due process if it is reasonably calculated, under all circumstances, to

inform parties of proceedings which may directly affect their legally protected interests.” *Geil v. Missoula Irr. Dist.*, 2002 MT 269, ¶58, 312 Mont. 320, 59 P.3d 398.

Catlin was not given notice of the other parties’ inclusion to in this interlocutory relief. Up to the point the Order was issued, Catlin reasonably relied on the Answers Williams, Jacksons, and Meagher County had filed to conclude and assume none of those parties were seeking preliminary injunctive relief, or that access to any of them was part of the hearing, or subject to being granted as a result of FT’s motion. Had Catlin been put on notice, as is required by law, it could have called additional witnesses and provided other evidence to contradict the other parties. For example, Catlin would have more vigorously pursued sworn testimony from the Meagher County Commissioners, subpoenaed them to testify, and/or requested a hearing continuance until their depositions could be taken. Ironically, prior to the hearing, Catlin had scheduled depositions for the Commissioners, but Meagher County filed for a protective order seeking to prevent those from occurring, to which Catlin objected, and the court has not yet ruled upon (despite this being fully briefed approximately 9 months ago). *Meagher County Prot. Order Mot.*, 3/29/21, CR112; *Def. Catlin Answer to Prot. Order Mot.*, 4/13/21, CR119; *Reply Brief*, 4/26/21, CR127. In any event, Catlin was afforded no notice of any of these parties being included in the preliminary injunction, and as such, Catlin was deprived

of its Constitutionally protected due process rights. The lower court therefore abused its discretion by adding those additional parties and making conclusory findings about MAR.

III. The district court erred in broadly ruling on the merits of the case rather than restricting its Findings and Conclusions to those necessary to determine whether a preliminary injunction should, or should not, be granted.

This Court has held that a preliminary injunction should not resolve the merits of the case; in fact, court analysis at this interlocutory stage “is not intended to express and does not express any opinion about the ultimate merits” of the underlying case. *Benefis Healthcare v. Great Falls Clinic, LLP*, 2006 MT 254, ¶19, 334 Mont. 86, 146 P.3d 714. Further, a preliminary injunction “should in no manner anticipate the ultimate determination of the questions of rights involved” instead, “findings and conclusions directed toward the resolution of the ultimate issues are properly reserved for trial on the merits.” *Cole v. St. James Healthcare*, 2008 MT 453, ¶13, 348 Mont. 68, 199 P.3d 810; *See also Yockey v. Kearns Properties, LLC*, 2005 MT 27, ¶18, 326 Mont. 28, 106 P.3d 1185. In granting or refusing interlocutory injunctions, a court shall set forth the findings and conclusions which constitute the grounds of its action. M.R.Civ.P. 52(a). In determining the merits of a preliminary injunction, it is not the province of either the district court or this Court (for cases on appeal) to determine matters that may arise upon a trial on the merits. *Sweet Grass Farms, Ltd. v. Bd. of Cty. Comm'rs of Sweet Grass Cty.*, 2000 MT 147,

¶38, 300 Mont. 66, 2 P.3d 825; *Yockey*, 2005 MT 27, ¶18 (where this Court found error when the lower court ruled on disputed facts central to the litigation, and therefore reversed “sweeping and final” findings and conclusions which should have been reserved for the jury); *See City of Whitefish v. Bd. of Cty. Comm'rs of Flathead Cty. ex rel. Brenneman*, 2008 MT 436, 347 Mont. 490, 199 P.3d 201 (vacating an order denying a preliminary injunction in part because determining an agreement was unenforceable exceeded the district court’s purview); *Knudson v. McDunn* (1995), 271 Mont. 61, 894 P.2d 295 (finding that the district court exceeded its authority when it determined a home did not violate covenants, and the covenants were ambiguous and unenforceable).

A preliminary injunction does not determine the merits of the case, but rather, prevents further injury or irreparable harm by preserving the status quo of the subject in controversy pending an adjudication on the merits. *Knudson*, 271 Mont. 61, 65. The above cited cases show that if the district court exceeds its purview concerning a preliminary injunction, the ruling or findings and conclusions may be overturned upon appeal. In this case, the district court exceeded the scope of a preliminary injunction action, and its Order should be reversed.

- A. The district court ruled on the case merits in its preliminary injunction order, thereby abusing its discretion and wrongfully invading the purview of the jury.**

A trial court's function in granting a preliminary injunction is to decide whether a sufficient case had been presented to justify preserving the status quo until trial, and nothing more. *Knudson*, 271 Mont. 61, 65. Any findings and conclusions entered by the lower court which adjudicate the merits of the ultimate issues of fact and law presented for trial should be reversed. *Yockey*, 2005 MT 27, ¶¶19–20. FT has presented twelve enumerated counts against Defendants in its Amended Complaint. CR55. These counts include declaratory judgment relief to determine that: MAR is a County/Public Highway (which includes allegations related to abandonment); there is a reserved easement over MAR (which also includes allegations related to abandonment); there is servitude created over MAR by implication (which references alleged reservations of an access right to Williams, Jacksons, and “possibly the County”); there is a public easement by prescription; there is an easement by estoppel; and a public highway was created by Montana Statute. *Am. Complaint*, 13-15, 17, 19-22, CR55. FT goes on to assert unreasonable interference with an easement, unjust enrichment, preliminary and permanent injunctive relief, tortious interference with easements (and trespass), and negligence. *Id.*, 23-29.

The most glaring areas where the district court abused its discretion, and exceeded the scope of the preliminary injunction action, are shown by it finding and concluding the location of an old stage station; that MAR was established as a county

road; the location of said county road; that said road was not abandoned; and that FT has a property right. *Order, Findings*, ¶¶32-40; *Conclusions*, ¶¶ M, EE, CR163. These all relate to and/or are directly on point with the underlying issues of this case. *Order*, CR163.

The district court clearly anticipated and expressed a final opinion as to the ultimate determination of the rights in question, rather than merely deciding whether a sufficient case had been presented to warrant preserving the property and/or rights according to the status quo until trial. *Porter*, 192 Mont. 175. This is coupled with the fact that discovery is not completed in this case, including an outstanding motion related to whether Catlin will be allowed to depose the Meagher County Commissioners. *Knudson*, 271 Mont. 61, 65 (finding the district court erred when it reached a final determination on the merits of a case, in a preliminary injunction, prior to the completion of discovery).

The court made over-reaching and sweeping findings and conclusions in its Order, which thereby touched on and/or determined ultimate issues which should be reserved for the jury. This was clearly erroneous and a manifest abuse of discretion warranting reversal of the Order.

B. The district court's Findings and Conclusions contain many inaccuracies and inconsistencies and are not supported by the record.

In addition to the district court making sweeping and dispositive determinations in its Order, that Order also contains a number of Findings and Conclusions which are not supported by the record or substantial credible evidence, and are therefore clearly erroneous, resulting in an Order which was a manifest abuse of its discretion. *Pinnacle Gas Resources, Inc. v. Diamond Cross Props., LLC*, 2009 MT 12, ¶12, 349 Mont. 17, 201 P.3d 160 (stating a “manifest abuse of discretion is one that is obvious, evident, or unmistakable”). The below are additional examples of the lower court’s errors in its Order. Appellant’s Exhibit 1, CR163.

In this regard, the dispositive issues in this case relate to: (1) the existence of a valid county road; (2) if a valid county road exists, then its exact location; and (3) whether a valid county road existed and if so, was it abandoned. Additional ultimate issues relate to alternate access routes for FT, and potential damages. The preliminary injunction order ruled on all these issues, and also contains errors related to damages, harm, and includes defendants who were not parties to FT’s motion or the relief requested therein.

Catlin submits the following elements in the Order erroneously made final determinations related to the existence, establishment and proper procedure, standards, rules needed for a valid “county road”, which includes specific rulings by the court as to the alleged location of an old stage station, Ford’s Sheep Camp and

Hill Ranch: Findings 26, 27, 32-34, 38, 39, 41, and 45; Conclusions M, N, O, P, K, R, EE, and NN.

The court erroneously made final determinations related to the location of the “county road” at MAR: Findings 32-34, 38, and 45.

The court erroneously made final determinations related to whether the county road had been abandoned: Findings 21; Conclusions S, T, DD, and NN.

The court erroneously included parties in the Order who were neither named in FT’s motion, nor requested such relief be granted to them, in the following: Introductory language; Findings 1 and 31; and Order, Section III.

The court erroneously determined FT suffered damages, in the following: Conclusion OO.

The court erroneously determined issues related to “harm” and/or injury in the following: Conclusions Z, FF, JJ, KK, and OO.

The court erroneously determined FT had no other access than MAR, despite qualifying all such language related to access with terms such as, “feasible”, “reasonably”, “comparable”: Findings 11, 40, 43-46; Conclusions V, Y, Z, HH, II, JJ, LL.

Additionally, Finding 4 is unsupported by the evidence in that the court incorrectly identified Jacksons’ ownership in Section 2, when they own the whole section, not just the north half.

CONCLUSION

Although the district court has broad discretion to grant a preliminary injunction, its Order was a manifest abuse of discretion because it erred by finding a threatened harm or injury to FT, that the status quo period was from 2017-2019, and by making sweeping dispositive determinations in clear conflict with the record and Montana law. The district court should have narrowed its Findings and Conclusions to those necessary to grant, or deny, a preliminary injunction. Furthermore, contrary to Montana law and this Court's precedents, the district court expressly adjudicated and found that MAR is a county road, which was not abandoned, that FT has a true and active right to access the road, that FT had been damaged by Catlin, and granted remedy to other parties who neither specifically moved for, nor requested such temporary relief.

FT suffered no threatened harm or injury which warrants issuing a preliminary injunction, or which meets the statutory requirements. There is no illegal action or violation of a right which needed to be acted upon at this time, because there is no exigency or resulting harm or requisite injury which needed to be stopped pending trial. Simplified, FT desires to use the quickest and easiest route to the Property whenever its non-resident members decide to visit Montana, regardless of the legality of access, or hardship on the families living on and working the effected underlying burdened land. Desire or convenience is not the legal standard, and the

district court erred when it issued a preliminary injunction in FT's favor, particularly when also considering that FT itself acknowledges it has accessed the Property throughout this process, and prior to litigation, without using MAR.

The district court's Findings and Conclusions reflected an unsupported approach to granting FT's motion, which lacked any tailoring to constrain its Order to the issue before the court; specifically, the temporary use of MAR. The district court's Order was a manifest abuse of discretion because it is not authorized to issue a preliminary injunction which includes sweeping dispositive determinations as to the underlying issues. The district court exacerbated this mistake by applying the same to other parties who neither moved for, nor joined in FT's requested relief. The lower court abused its discretion, and deprived Catlin of notice and due process, when it granted temporary use of MAR to FT, other parties, and the public. This Court should therefore reverse the Order in total and remand back to the district court for further proceedings.

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Respectfully submitted this 9th day of February, 2022.

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CERTIFICATE OF COMPLIANCE

Pursuant to the Montana Rules of Appellate Procedure, I certify that Appellant’s Brief is printed with proportionally spaced Times New Roman typeface of 14 points; is double spaced, and the word count calculated by Microsoft Word is not more than 10,000 words excluding the Table of Contents, Table of Authorities, Certificate of Compliance, and Certificate of Service.

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CERTIFICATE OF SERVICE

I, Vuko J. Voyich, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 02-09-2022:

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