

## IN THE SUPREME COURT OF THE STATE OF MONTANA

Case No. DA 22-0257

TIM BEARD,	)
	)
Appellant and	)
Counter Claimant	)
	)
vs.	)
	)
PAULETTE SPRAGUE, in her	)
Individual capacity and on behalf	)
of CHARLES SPRAGUE, Decease.	)
	)
Appellee and Counter	)
Defendant.	)
	)

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Appeal from the District Court of the First Judicial District of the State of Montana,  
In and For the County of Lewis and Clark, Case No. BDR 2020-49  
The Honorable Judge Michael F. McMahon, Presiding.

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**APPELLEE'S RESPONSE BRIEF**

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## APPEARANCES:

Tim Beard  
4440 Browns Gulch Road  
Helena, MT 59602

Respondent/Appellant  
Pro Se

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### **STATEMENT OF THE ISSUES PRESENTED FOR REVIEW**

1. Did the District Court err by finding Beard's permissive use of a segment of road, notwithstanding Beard's assertion of a Judicial Admission by Charles of no permission given?
2. Did the District Court abuse its discretion by the scope of the injunction against Beard?
3. Did the District Court err by holding Beard liable for trespass and the damages assessed therefore?
4. Did the District Court abuse its discretion by not awarding Beard Attorney fees in his civil assault claim against Charles?

### **STATEMENT OF THE CASE**

The suit was filed in the First Judicial District Court by Charles and Paulette Sprague after the neighboring property owner, Tim Beard, (Beard) blocked their main access to their rural home. [Filing # 1]

At a hearing shortly after the case was filed, the District Court issued an order enjoining Beard from blocking the Sprague's access and ordered Beard to remove the gravel, rocks, dirt, and tree parts he had placed to block the Sprague's access road. [Filing # 5]

After this initial Order, Beard again blocked the Sprague's access on three additional occasions. One of these road blockages by Beard was after Charles died during the litigation. After this last blockage the District Court entered an Order of Protection for Paulette Sprague against Beard. The District Court found "That an injunction is necessary for the reason that Beard on multiple occasions unreasonably and unlawfully trespassed and interfered with Brown's Gulch road on Sprague property." [Filing # 119; COL 76]

During the litigation, about six months before Charles died, Beard was on Sprague's property and a verbal dispute between Beard and Charles ensued. Beard retreated to his property. Law enforcement was called. Because of a video made by Beard, Charles was charged with assault he displayed a handgun when defending his property. Charles never pointed the handgun at Beard. [Filing # 119; COL 54] Charles died before that criminal action went to trial.

After that incident, Beard amended his Counterclaim to include a civil assault claim against Charles, who died prior to the trial and the District Court never heard Charles' testimony on this issue and the criminal charges against him dismissed. The District Court held that "while Charles committed civil assault against Beard on July 13, 2020 while Charles was on his property, his actions were justified under Mont. Code Ann. 45-3-104 to prevent beard from once again trespassing on his property." [Filing # 119; COL 55] As a result of the

obstructions placed upon the road by Beard, the District Court found Beard liable for trespass on three occasions and awarded Paulette \$15,000.00 in damages.

[Filing # 119; COL 21-25]

The District Court awarded Beard a prescriptive easement over a segment of road described as “the Fishhook.” [Filing # 119; COL 40] The Fishhook easement is, for almost all purposes, a legally dead-end road.” [Filing #119;COL 73]

### **STATEMENT OF RELEVANT FACTS**

The Sprague and Beard properties, near Hauser Lake, share a common boundary. [Filing # 119; FOF3] The Sprague’s and Beard accessed their residences over a roadway commonly known as the “Browns Gulch Road.” [Filing # 119; FOF #4]

To access to his property Beard has an express easement over ninety feet (90’) of Sprague’s property. Beard’s easement over Sprague’s property is denominated by the Court as the “First Turnoff.” [Filing # 119; FOF #5] Prior to the Sprague’s granting this express easement to the first turnoff, Beard had permissive use of it.

The portion of Brown’s Gulch Road at issue was on a single parcel (Government Lot 7), then owned by Charles Sprague and Robert Wilson. Wilson then conveyed his interest to Jerry Lorbeck, In 1986, Lorbeck quitclaimed his interest in the western portion of Government Lot 7, which contained the portion

of Browns's Gulch Road at issue access road at issue to Charles Sprague and in turn, Sprague then quitclaimed his interest in the eastern portion of the parcel to Lorbeck. Each owned their respective parcels individually and free of the other's interest. After Lorbeck died, in 2003 Beard purchased the property from Lorbeck's estate and at that time obtained sole ownership of the eastern portion of Government Lot 7. [Filing # 119; FOF #6]

Thereafter, in 2004, Beard had blocked a different road that crossed his property which another neighbor used to access a mining claim. That led filing the case of Walker vs Charles Sprague and Tim Beard. Montana First Judicial District Court Case No. CDV-2004-742. On June 5, 2006, the Hon. Thomas Honzel entered Findings of Fact, Conclusions of Law and Order in the case of Walker vs Charles Sprague and Tim Beard, , holding in relevant part:

¶8 "In 1987 Sprague Sold a Portion of his property located on the east side of Browns Gulch road ... to Jerry Lorbeck. Sprague retained a small strip of land between the Brown's Gulch road and the entire parcel of property that he sold to Jerry Lorbeck. In other words, Sprague owned property on both side of the Browns Gulch Road."

¶13, "When Lorbeck died in 2000, Beard was hired to watch over the property ... During the time Beard was the caretaker, access to the Eagle's Nest was on a permissive basis. Anyone who needed to cross the property would contact Beard who would unlock the gate and allow the person onto or across the property."

¶14, "In 2003 Beard purchased the property from the Lorbeck estate." [Filing # 119; FOF 9]

Thus, the portion of Brown's Gulch Road at issue is wholly situated on Sprague's property. [Filing # 119; FOF 7]

On April 6, 1984, Charles Sprague gave an express easement on the portion of Browns Gulch Road at issue, to John Watt and Sam Hopler, to access their property at the end of Browns Gulch Road, on Hauser Lake.[Filing # 119; FOF #8]

Prior to having ownership of his property, Tim Beard states he was granted permission to use the road in question by Watt and Hopler. [Beard Depo TR 35:22- 36: 8]

On four (4) separate occasions Beard has purposefully and with malice blocked Sprague's access to their home as follows:

First Blockage by Beard occurred in early September of 2019.  
Second Blockage by Beard occurred in mid-September of 2019.  
Third Blockage by Beard occurred in July of 2020.  
Fourth blockage March and/or April 2021. [Filing # 119; FOF ¶193-194]

Beard admitted to creating all four obstructions. [Filing # 119; FOF ¶131]

After the second blockage, Charles and Paulette Sprague filed this action for injunctive relief and declaratory judgment and on September 26, 2019, obtained a temporary restraining order against Beard to stop him from blocking the road to Sprague's home. [Filing #5]

During the litigation, on January 29, 2021, Charles Sprague passed away. [FOF 13] Shortly after Charles died, from March 27, 2021 through April 2, 2021



Beard kept the fourth blockage of the road in place, which blocked Paulette Sprague's only ingress and egress to her property for six (6) days. Beard was charged with and convicted of the crime of disorderly conduct in the Justice Court of Record in Case No. TK-515-2021-0000818. Because of this, in June of 2021 the District Court granted Paulette Sprague a temporary protection order against Beard. [Filing # 119; FOF 14]

During the litigation there was a verbal confrontation between Charles Sprague and Tim Beard, starting on Sprague's property and ending on Beard's. On July 21, 2020, six (6) months before Charles Sprague died, the District Court entered an ex parte temporary order of protection (TOP) in Beard's favor against Charles Sprague. The incident on that date did not involve any physical engagement between Charles Sprague and Tim Beard, but because he displayed a handgun during the verbal confrontation, Charles's Sprague was charged with assault with a weapon. [Filing # 119; COL 54-57]

Due to Charles Sprague's extremely poor physical health which severely limited his physical ability in all respects, and his eventual death on January 29, 2021, there was never a hearing on the ex parte TOP nor a trial on the criminal charge, which was dismissed.

Shortly after the verbal confrontation, but prior to Charles Sprague's death, Tim Beard amended his complaint to allege additional causes of action for assault and emotional distress. [Filing #24, ¶52-60]

### **STANDARD OF REVIEW**

Findings of fact are reviewed for clear error. A finding of fact is clearly erroneous if it is not supported by substantial evidence, if the District Court at trial misapprehended the effect of the evidence, or if a review of the record convinces the Supreme Court that a mistake has been committed. *Simpkins v. Speck*, 2019 MT 120, ¶ 7, 395 Mont. 509, 443 P.3d 428.

A permanent injunction order is reviewed to determine whether a manifest abuse of discretion occurred. *Simpkins v. Speck*, 2019 MT 120, ¶ 8, 395 Mont. 509, 443 P.3d 428. A manifest abuse of discretion is one that is obvious, evident, or unmistakable. *Bitterrooters for Planning v. Bd. of Cnty. Comm'rs*, 2008 MT 249, ¶ 12, 344 Mont. 529, 189 P.3d 624.

Attorney fees awards are reviewed for abuse of discretion. *In re Szafryk*, 2010 MT 90, ¶ 19, 356 Mont. 141, 146, 232 P.3d 361, 365.

The Supreme Court standard of review for conclusions of law is whether the District Court was correct. *Lyndes v. Green*, 2014 MT 110, ¶ 14, 374 Mont. 510, 325 P.3d 1225, *Neil Consultants, Inc. v. Lindeman*, 2006 MT 80, 331 M 514, 134.

## **SUMMARY OF ARGUMENT**

### **PRESCRIPTIVE EASEMENT**

In his brief, page 9, Beard asserts the District Court erred because he made several conflicting statement on the issue of having permission to use the portion of Brown's Gulch Road on Sprague's property. However, this is an acknowledgement of Beard's on the record admission at trial that he had received permission. [TT pages 483-484]

The District Court's finding of Beard's permission to travel over Sprague's property is clearly supported by substantial evidence, his own admission. There is no basis to find the Court misapprehended the effect of the evidence at trial.

### **PERMANENT INJUNCTION**

The portion of Browns Gulch Road over which the injunction against Beard is effective, has not been used since the 2010 fire and resulting erosion. The only basis for the Court allowing Beard any access at all is someday the holders of the express easement, Watt and Hopler, may request Beard repair and maintain the unusable portion of Browns Gulch Road on their property. Watt and Hopler have an alternative route which they have been using to access their property since the 2010 fire.

The terms of the injunction against Beard were supported by substantial evidence and testimony of Hopler and Beard. The District Court cited to factual evidence and testimony to support its finding of sufficient basis for the entry of the injunction against Beard.

#### TRESSPASS BY BEARD

Going onto another's property, without permission and obstructing another's access is a trespass. Beard admitted to creating all four obstructions. [Filing # 119; FOF ¶131] First blockage in early September of 2019; second blockage in mid-September of 2019; third blockage in July of 2020; and. fourth blockage late March and into April 2021. [Filing # 119; FOF ¶193-194]

#### ATTORNEY FEES

Beard's attorney fee argument is solely based upon an assertion in Paulette Sprague's proposed Findings of Fact alleging Beard orchestrated the incident by taunting Charles. (Appellant's Opening Brief page 9, citing Filing #106, p 10)

Paulette Sprague was not present during this mid-litigation incident which led to Beard amend his counterclaim to allege civil assault. Charles Sprague did not have the opportunity to testify about this incident as he died before the hearing on Beard's motion for an order of protection against him. The criminal charges against Charles Sprague were pending at his death, and as a result dismissed.

Sub-section (1) of 27-1-722, MCA, makes it clear it is applicable only “to the person using the force,” which Beard admits, and the District Court found was Charles Sprague. As Charles Sprague made no statement or defenses at all before his death, he could not be found to have asserted the defense of justifiable use of force.

### **ARGUMENT**

#### **JUDICIAL ADMISSION RE: PERMISSION TO USE ROAD**

The Declaration of Charles Sprague which Beard is attempting to use to show Charles made a judicial admission that he had never given Beard permission to cross the portion of Brown’s Gulch Road past the first turn-off .. This statement was; “Tim Beard has never been given permission to cross my property past the first turn-off.” Charles Sprague made this statement in opposition to Beard’s partial summary judgment motion for an easement over the 90’ to the first turn-off. [Filing #53, ¶7, 10]

His motion for partial summary judgment states “Beard seeks though this motion to establish his easement rights to the section of road labeled on the attached map as Exhibit A as the ‘First Turnoff’.” [Filing #49, p 2]

The Sprague’s have never disputed Beard had permission to use the first 90’ to the “first turn-off” to access his property. He first had permissive use of this 90’ and now has express easement over it. Beard’s partial summary judgment motion

and Charles Sprague's Declaration in opposition had nothing to do with the road between the first turnoff and second turnoff, over which Beard is asserting a prescriptive easement. [Filing #53, ¶7, 10]

The Court had substantial evidence in the several statements by Beard during his deposition and at trial admitting Charles Sprague had given him permission. [Filing #119, FOF ¶ 17, p. 14; FOF ¶¶ 114-117, p. 29] Tim Beard's trial testimony admitted Sprague had given him permission to use Browns Gulch Road. [TT pages 483-484]

#### PERMANENT INJUNCTION

An injunction is proper where: (1) pecuniary compensation would not afford adequate relief; (2) it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief; (3) the restraint is necessary to prevent a multiplicity of judicial proceedings [...] Mont. Code Ann. § 27-19-102.

In issuing an injunction the District Court acts within its discretion if it meets each of the following standards: An order granting an injunction must (1) set forth the reasons for its issuance; (2) be specific in its terms; (3) describe in reasonable detail, and not by reference to the complaint or any other document, the act or acts sought to be restrained; and (4) 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. Guthrie v. Hardy, 2001 MT 122, ¶ 58, 305 Mont. 367, 380, 28 P.3d 467, 476-77.

The portion of Browns Gulch Road over which the injunction against Beard is effective, has not been used since the 2010 fire and resulting erosion. The only basis for the Court allowing Beard any access at all is the possibility that in the future the holders of the express easement to get to their property, Watt and Hopler, could possibly request Beard repair and maintain the unusable portion of Browns Gulch Road on their property. Watt and Hopler have an alternative route which they have been using to access their property since the 2010 fire. Heavy rains caused Browns Gulch Road to wash out in 2010, making it unusable for the Hopler family. [Filing # 119, FOF ¶ 170-171, p. 38]

## TRESPASS

Trespass is an intentional tort claim for damages caused by an unauthorized entry or holdover upon real property of another. Tags Realty, LLC v. Runkle, 2015 MT 166, ¶ 15, 379 Mont. 416, 352 P.3d 616. The essential elements of a trespass claim are: (1) an intentional entry or holdover; (2) by the defendant or a thing; (3) without consent or legal right. Branstetter v. Beaumont Supper Club, Inc., 224 Mont. 20, 24, 727 P.2d 933, 935 (1986)

Going onto another's property, without permission and obstructing another's access is a trespass. Beard admitted to creating all four obstructions. [Filing # 119,

FOF ¶131] First blockage in early September of 2019; second blockage in mid-September of 2019; third blockage in July of 2020; and, fourth blockage late March and into April 2021. [Filing # 119, FOF ¶193-194]

Beard's actions in blocking this portion of Browns Gulch Road, after the District Court instructed him to not do so, is clear evidence of an intentional act. Beard was convicted of the crime of disorderly conduct for the fourth time he blocked Browns Gulch Road, which once again is substantial evidence of an intentional act.

#### ATTORNEY FEES

Beard's legal contentions in the pretrial order doesn't mention a demand for attorney fees for the prevailing party in a civil assault case when the defendant invokes the defense of for justifiable use of force defense. Rather, he asserts;

“Beard is entitled to his attorney's fees generated in defending and asserting his rights regarding that issue, to access his property through that date, pursuant to Mont. Code Ann. § 27-8-313.”

Beard's legal contention No. 3 in the pretrial order [Filing #98] states:

“Whether Beard is entitled to declaratory judgment stating a prescriptive easement over the Second Turnoff, due to “open, notorious, exclusive, adverse, continuous and uninterrupted use of the easement” for five years. *Renner v. Nemitz*, 2001 MT 202, ¶ 19, 306 Mont. 292, 33 P.3d 255.”

Paulette's proposed FOF 48 which Beard alleges [Appellant's Opening Brief pg. 32] is Paulette invoking justifiable use of force on behalf of her deceased husband, Charles, states:



“The incident leading to the ex parte TOP and the criminal assault charge against Charles Sprague was purposefully orchestrated by Beard, taunting Charles Sprague by yet again trespassing on his property and then lying in wait with a video camera for Charles to drive the short distance down his driveway to where Beard had left a piece of equipment and piles of dirt in the access road to Sprague’s home. Charles Sprague did drive from his house to the blockage where Beard had been waiting. When he observed Charles Sprague drive down to the blockage, Beard focused his video camera on Sprague and drove to his property where he continued to taunt and video tape Mr. Sprague.”

In her proposed FOF 48, Paulette Sprague is providing the Court with her understanding of what happened during this incident between Beard and Charles Sprague. Nowhere in that statement does Paulette Sprague assert use of force by Charles, much less justified use of force. [Filing #119, FOF 48]

Paulette Sprague was not present during the mid-litigation incident which led to Beard amend his counterclaim. Charles Sprague did not have the opportunity to testify on this incident as he died before the hearing on Beard’s motion for an order of protection against him. The criminal charges against Charles Sprague were pending at his death, and as a result dismissed.

The prevailing party in a civil assault action, in which the defendant party to that assault claim asserts that the force was allowable under “Title 45, Chapter 3, Part 1” of the Montana Code Annotated, “is entitled to costs and reasonable attorney fees.” Mont. Code Ann. § 27-1-722(4). However, sub-section (1) of 27-1-722, MCA, makes it clear it is applicable only “to the person using the force.”

Beard admits, and the District Court found was Charles Sprague. As Charles Sprague made no statement or defenses at all before his death, he could not be found to have asserted the defense of justifiable use of force.

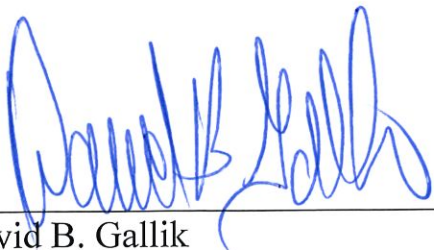
The applicable section under Title 45, Chapter 3, Part 1” of the Montana Code Annotated is 45-3-102, MCA, use of force in defense of person. This is a specific intent crime as is the defense of justifiable use of force. There is no evidence nor testimony related to Charles Sprague’s state of mind. There has been no assertion of the defense of justifiable use of force by the perpetrator, Charles Sprague.

### **CONCLUSION**

The District Court thoroughly set forth its findings and conclusions, all of which justified its final decision. All of the Findings of Fact are supported by substantial a review of the record confirms no mistakes were made by the District Court in that regard.

The District Court did not abuse its discretion on the issues determined and its conclusions of law are correct.

Dated this 27<sup>th</sup> day of April, 2023.

  
\_\_\_\_\_  
David B. Gallik  
Attorney for Appellee, Paulette Sprague

### **CERTIFICATE OF SERVICE**

On the day set forth below, I served the Appellee's Response Brief on interested parties in this action by placing said pleading enclosed in a sealed envelope with postage thereon fully prepaid in the United States of America at Helena, Montana, addressed to the following individual(s):

Tim Beard  
4440 Browns Gulch Road  
Helena, MT 59602

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 27<sup>th</sup> day of April, 2023.


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David B. Gallik  
Attorney for Appellee, Paulette Sprague

### **CERTIFICATE OF COMPLIANCE**

This brief is proportionately spaced using Times New Roman typeface, 14 point size and has 3558 words, excluding the face page, table of contents, table of cases and the certificate of compliance and service. This document was typed using WordPerfect word processing software and the information set forth herein was obtained from the word count of such software.

Dated this 27<sup>th</sup> day of April, 2023.

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David B. Gallik  
Attorney for Paulette Sprague