IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court No. DA 23-0571

PAUL PHILLIP BARDOS AND MARY L. BARDOS REVOCABLE TRUST,

Plaintiff and Appellant,

v.

ROBERT L. SPOKLIE

Defendant and Appellee.

From the Eleventh Judicial District Court, Flathead County, Montana
Bardos v. Spoklie
Cause No. DV-21-1490
Honorable Dan Wilson

APPELLEE'S RESPONSE BRIEF

COUNSEL:

Kimberly S. More
CROWLEY FLECK PLLP
1667 Whitefish Stage Road
P.O. Box 759
Kalispell, MT 59903-0759
kmore@crowleyfleck.com

Attorneys for Appellant

Marcel A. Quinn
Thomas A. Hollo
HAMMER, QUINN & SHAW PLLC
100 Financial Drive
P.O. Box 7310
Kalispell, MT 59904-0310
marcelquinn@attorneysmontana.com
tomhollo@attorneysmontana.com

Attorneys for Appellee

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

SECONDARY MATERIALS

STATEMENT OF THE CASE

The Paul P. Bardos and Mary L. Bardos Revocable Trust ("Bardos") and Robert L. Spoklie own abutting properties in Flathead County. This matter concerns an easement agreement (the "Easement Agreement") between Bardos and Spoklie which grants Spoklie a 60-foot-wide easement across Bardos' property (the "Easement"). Since entering into the Easement Agreement, during the winter, Spoklie has occasionally loaded, unloaded, and temporarily parked construction vehicles off the side of the road surface, but within the Easement area, to facilitate the ingress and egress of those vehicles across the Easement. Spoklie has also sought to replace existing mailboxes within the Easement and within an abutting 60' county road easement.

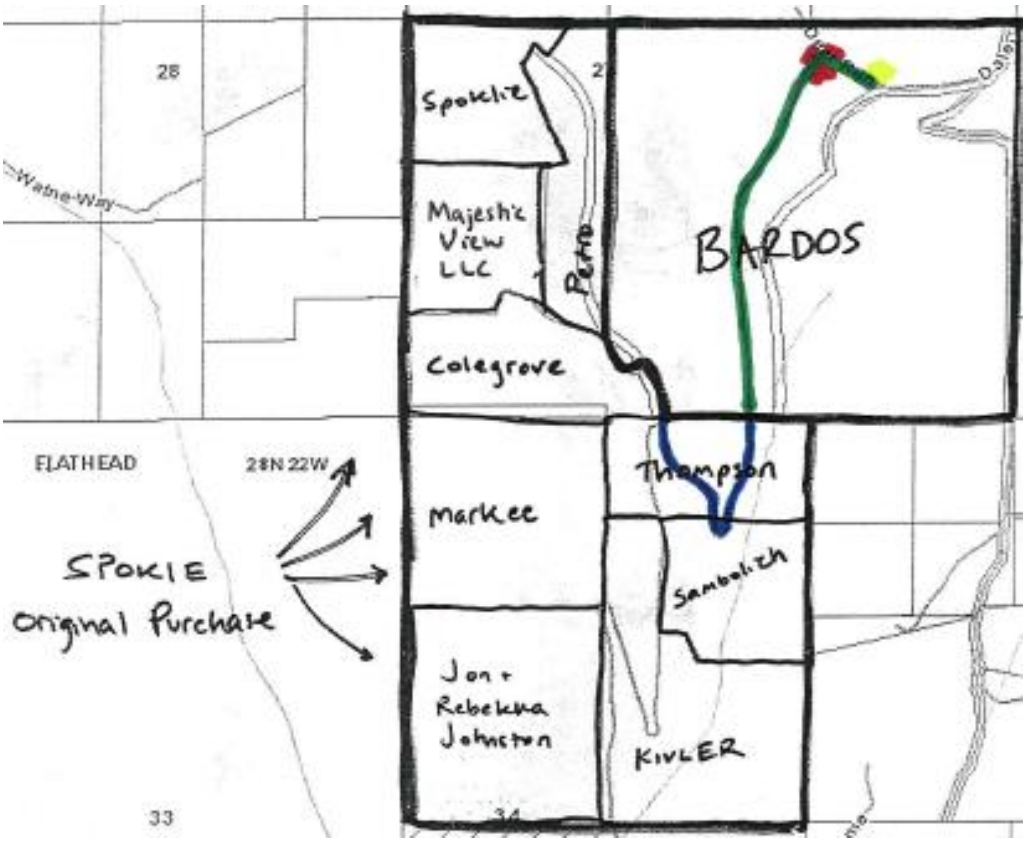
Bardos sought a preliminary injunction against Spoklie, arguing such conduct violates the Easement Agreement. Following a contested hearing, the District Court denied Bardos' request for preliminary injunction. Bardos appealed, and this Court affirmed. *Bardos v. Spoklie*, 2023 MT 16N, 411 Mont. 389, 523 P.3d 51.

Spoklie then moved for summary judgment. Following oral argument, the District Court granted Spoklie's motion. Bardos now appeals that Order.

STATEMENT OF FACTS

On July 25, 2018, Spoklie bought property in Flathead County. Court Record ("CR") 12, Ex. A (Spoklie Warranty Deed). In late September 2018, Spoklie began dividing his property into smaller parcels. CR 12, Exs. C-E (Certificates of Survey).

In November 2018, the Paul Phillip Bardos Revocable Trust bought property adjacent to Spoklie's property. CR 9, Ex. 3 (Bardos Warranty Deed). The Paul Phillip Bardos Revocable Trust has since transferred its property to the Paul P. Bardos and Mary L. Bardos Revocable Trust. CR 12, Ex. 1 (Bardos Warranty Deed). A map of the properties at issue is below:



CR 9, Ex. 1; CR 21, p. 4.

On December 26, 2018, Spoklie and Bardos entered into an Easement Agreement that, in relevant part, granted Spoklie a 60-foot-wide easement for "roadway travel (ingress and egress)" over Bardos' property. CR 12, Ex. 4 (Easement Agreement), p. 2. Generally, the Easement, highlighted in green in the map above, branches off from the county road known as Daley Lane, goes west/northwest as Deer Run for approximately 500 feet, then branches off and heads in a southerly direction as Soler Run until it crosses the southern boundary of Bardos' property. *Id.*, Ex. 4 at "Exhibit A." The area to the north of Deer Run and Daley Lane is a meadow. Hearing Transcript ("HT") 29:19-30:1, 31:5-12. Bardos' residence is south of where Deer Run leaves Daley Lane. *Id.*, 68:3-8.

When Spoklie and Bardos bought their properties, there was a 60' county road easement passing through Bardos' property to Spoklie's property, part of which was developed as Daley Lane and part of which was undeveloped. CR 12, Ex. 4, p. 3. As part of the Easement Agreement, Spoklie consented to Bardos' eventual petition to abandon the undeveloped portion of the county easement. CR 12, Ex. 4, p. 3; HT 160:11-16. The portion that was abandoned starts where Daley Lane abruptly turns west then veers south and runs parallel to Soler Run (green line). HT 67:23-68:8. Bardos did not abandon the developed portion of the county road easement which runs up to his residence because Bardos wanted the County

to continue plowing and maintaining what is effectively his driveway. *Id.*, 70:12-16, 109:21-110:5.

The Easement Agreement also granted Spoklie the right to widen and remove trees at the sharp corner from Deer Run to Soler Run "for the purpose of improving driveability around the corner." *Id.*, Ex. 4, p. 2. This corner is highlighted in red in the above map. Because of the sharpness and grade of that corner, it is difficult for the large trucks that transport construction equipment to and from Spoklie's property to drive around it in the winter. HT, 114:16-115:6. As a result, approximately six to ten times in total, Spoklie has had these trucks pull off the side of the road on Deer Run, unload a construction vehicle, and temporarily park the construction vehicle so it can be retrieved and driven around the corner and down the remainder of the Easement. *Id.*, 115:7-116:25, 151:23-153:6. Such conduct was necessary because of the difficulty of driving loaded transporter trucks around the sharp corner in the easement during the winter. *Id.*, 169:16-170:6. The loading, unloading and temporary parking occurred on the edge of the meadow near the intersection of Daley Lane and Deer Run. It is off the road surface but within the Easement area, and it is highlighted in yellow in the above map. *Id.*, 115:7-118:13, 151:23-155:14, 171:1-15.

After several instances of this occurring, Bardos placed a row of boulders just outside the roadway surface, <u>but within the Easement area</u>, to block the use of

the area. *Id.*, 31:24-32:15, 34:2-35:9. Because the boulders blocked the Easement and the ability to transport this equipment in and out without parking the equipment in the roadway, Spoklie's worker, Rick Wyant, moved the boulders just far enough to allow him to temporarily park the equipment off the road surface, but within the Easement area. *Id.*, 118:23-119:10; 122:5-15.

Where Deer Run departs Daley Lane, there is also a row of mailboxes that long predates the Easement Agreement. CR 12, Ex. T; HT 97:14-19. Spoklie and the codefendants desire to replace those mailboxes with a nicer "cluster" mailbox. HT 50:11-25. Because the mailboxes are so close to the intersection, they are within both the subject Easement and the county road easement for Daley Lane. HT 120:20-121:18.

Below is a photo showing an example of a piece of construction equipment temporarily parked in the spot in question, with the road on the right, the mailboxes in the distant background, and the moved boulders to the left:

CR 12, Ex. 11, p. 2.

The Easement Agreement also granted Bardos a 60-foot-wide easement across a portion of Spoklie's property so that Bardos can access a separate road that traverses the western edge of his property ("Bardos Easement"). CR 12, Ex. 4, p. 3. The Bardos Easement is highlighted in blue in the above map. Spoklie is in the process of constructing a gate on the Bardos Easement on Soler Run, not on Bardos' property, in order to provide the current owners of the Spoklie property parcels both privacy and security. CR 36 at attached Aff. Spoklie. Bardos will be given a code to the gate so he can continue to access the Bardos Easement. *Id.*[1]

STANDARD OF REVIEW

The Court reviews a District Court's entry of summary judgment *de novo*. *Kilby Butte Colony, Inc. v. State Farm Mut. Auto. Ins. Co.*, 2017 MT 246, ¶ 7, 389 Mont. 48, 403 P.3d 664. "Summary judgment is appropriate when the moving party demonstrates both the absence of any genuine issues of material fact and entitlement to judgment as a matter of law." *Id.* The standard of review for declaratory judgment claims is to determine if the District Court's interpretation of law is correct. *City of Missoula v. Fox*, 2019 MT 250, ¶ 6, 397 Mont. 388, 450 P.3d 898.

Findings of fact entered by a district court sitting without a jury are reviewed

[1] The gate is now complete and Bardos has received a code for the gate, but that was not the situation when the District Court ruled on the subject motion for summary judgment.

to determine if they are "clearly erroneous." *Thibodeau v. Bechtold*, 2008 MT 412, ¶ 14, 347 Mont. 277, 198 P.3d 785. "Findings of fact are clearly erroneous if they are not supported by substantial evidence, the court has misapprehended the effect of the evidence, or our review of the record convinces us that a mistake has been made." *State v. Warclub*, 2005 MT 149, ¶ 23, 327 Mont. 352, 114 P.3d 254. Whether or not a right is reasonably necessary for the enjoyment of an easement is a question of fact. *See Mattson v. Mont. Power Co.,* 2012 MT 318, ¶ 34, 368 Mont. 1, 291 P.3d 1209 ("*Mattson II*") (citing *Guthrie v. Hardy*, 2001 MT 122, ¶ 47, 305 Mont. 367, 28 P.3d 467 (what may be considered a reasonable use of a general easement is usually a question of fact)), ¶ 38 (referencing whether easement use was "reasonably necessary" as issue for "trier of fact"); *Heller v. Gremaux*, 2006 Mont. Dist. LEXIS 468, at *6 (Mont. Dist. Ct. Aug. 4, 2006) (regarding issue probative of "whether an easement is reasonably necessary" as question of fact).

SUMMARY OF ARGUMENT

This Court should affirm the District Court's Order granting Spoklie's Second Motion for Summary Judgment because all of Spoklie's conduct was within the scope of the Easement. Temporary parking of vehicles within the Easement for purposes of shuttling them along the Easement is part of, and incidental to, the "ingress/egress" process. Moving boulders Bardos placed to block the Easement is also within the scope of the Easement. Replacing existing

mailboxes that are within the Easement is within the scope of both the Easement and the separate county road easement for Daley Lane. Therefore, the Court's ruling on Bardos' quiet title and declaratory judgment claims was correct. Moreover, because Spoklie's conduct was within his Easement rights, it does not constitute trespass or nuisance.

ARGUMENT

I. The District Court Correctly Decided Bardos' Quiet Title and Declaratory Judgment Claims as to the Scope of the Easement and Whether Spoklie's Conduct Was Within the Scope of the Easement

Bardos' Complaint asserts two quiet title claims, both of which seek declaratory judgment, and a separate, standalone declaratory judgment claim against Spoklie, each asking the Court to determine the rights, obligations, and liabilities, if any, exist as to the Easement, including (a) a declaration as to the width and scope of the Easement, (b) whether Spoklie can use the area beyond the 24 foot allotted roadbed for anything other than utilities, and (c) whether Spoklie's conduct is within the scope of said Easement. CR 10 (Complaint), ¶¶ 52-76.

The purpose of the Declaratory Judgment Act is to "settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations." *Safeco Ins. Co. v. Mont. Eighth Jud. Dist. Ct.*, 2000 MT 153, ¶ 31, 300 Mont. 125, 2 P.3d 834 (quoting § 27-8-102, MCA). While the focus of the Act is on construing rights under written instruments, *see* § 27-8-202, MCA, a court is

not restricted in "any proceeding where declaratory relief is sought in which a judgment or decree will terminate the controversy or remove an uncertainty." *Id.* (quoting § 27-8-205, MCA). Thus, a court has the liberal discretion to "declare rights, status, and other legal relations whether or not further relief is or could be claimed." *Id*. (quoting 27-8-201, MCA).

The District Court correctly determined the scope of the Easement and correctly determined that all of Spoklie's conduct at issue was within the scope of the Easement.

a. Spoklie's Temporary Parking of Vehicles Within the Easement Area Is Within the Scope of the Easement.

"The extent or scope of an express easement is determined by the terms of the grant." *Woods v. Shannon*, 2015 MT 76, ¶ 12, 378 Mont. 365, 344 P.3d 413 (citing § 70-17-106, MCA). The construction of a written easement is governed by the rules of contract interpretation. *Whitefish Congregation of Jehovah's Witnesses, Inc. v. Caltabiano*, 2019 MT 228, ¶ 28, 397 Mont. 284, 449 P.3d 812. The interpretation of a written easement is a question of law. *Id.*

"Generally, 'where the creating words of a deed make the scope and the location of an easement perfectly clear, there is no need for further inquiry.'" *Whary v. Plum Creek Timberlands, L.P.*, 2014 MT 71, ¶ 9, 374 Mont. 266, 320 P.3d 973. "If the grant or reservation is specific in its terms, it is decisive of the limits of the easement." *Id.* Montana regards easements for "ingress and egress" as

specific. *Woods*, ¶ 14. The Easement here is for ingress and egress. Therefore, it is specific, such that its scope was a question of law for a Court, as opposed to a question of fact for a jury. Regardless, there are no disputed facts material to this issue, and Bardos does not suggest that there are. *See, generally*, Bardos Brief.

"An express easement for the purpose of ingress and egress, with no other restriction, entitles the holder of the easement and his or her 'family, tenants, and invitees . . . to use the road 24 hours a day by any form of transportation that does not inflict unreasonable damage or unreasonably interfere with the enjoyment' of the land crossed by the easement, also termed the servient estate." *Woods*, ¶ 15 (emphasis added).

The transfer of an easement also transfers all that is incidental to the easement. *McCauley v. Thompson-Nistler*, 2000 MT 215, ¶ 49, 301 Mont. 81, 10 P.3d 794 (citing § 70-1-520, MCA ("The transfer of a thing transfers also all its incidents unless expressly excepted, but the transfer of an incident to a thing does not transfer the thing itself."); *see also Yellowstone Valley Co. v. Associated Mortg. Investors*, 88 Mont. 73, 84, 290 P. 255, 258-259 (1930) ("the governing rule is that everything essential to the beneficial use and enjoyment of the property conveyed is, in the absence of language indicating a different intention on the part of the grantor, to be considered as passing by the conveyance").

The Court in *Mattson v. Montana Power Co.*, discussed this principle as

follows:

> This Court long ago recognized "the maxim of the law, that when the use of a thing is granted, everything is granted by which the grantee may reasonably enjoy such use, that is, rights that are incident to something else granted." The rule that conveyances include those rights necessary to make use of the property conveyed can be traced back in the common law at least as far as the 13th century: "A maxim dating from the time of Edward I (1239-1307) states that one who grants a thing must be understood to have granted that without which the thing could not be or exist." These rights are in the nature of a "secondary easement," i.e., "[a]n easement that is appurtenant to the primary or actual easement; the right to do things that are necessary to fully enjoy the easement itself." Of course, nothing passes by implication as incidental to the grant of an easement except that which is reasonably necessary to its fair enjoyment.

2009 MT 286, ¶ 37, 352 Mont. 212, 215 P.3d 675 (*"Mattson I*") (emphasis added). In other words, when the right to use an easement in a particular way is granted, the grantee receives the right to do everything which is reasonably necessary to enjoy such use. *Id.*

Spoklie's temporary parking of construction vehicles off the side of the road, but within the Easement area, is a reasonable and necessary part of ingress and egress for those vehicles. It is difficult for the transporter trucks that carry the construction vehicles to traverse the steep, sharp corner where Soler Run turns off of Deer Run. As such, the construction vehicles have been unloaded on Daley Lane, temporarily parked off the side of the road but within the Easement, and then driven around the turn and along the rest of the Easement directly. This is part of, and incidental to, the coming and going process for these vehicles. There is no

evidence these actions unreasonably burdened anyone's use of the road or Easement area. *See, generally,* HT. Therefore, it is within the scope of the ingress/egress Easement.

The Easement does not require Spoklie to be actively moving, at all times, to constitute ingress or egress. Bardos' argument asks the Court to insert such language into the Easement, which is prohibited. *See Mary J. Baker Revocable Trust v. Cenex Harvest States, Coops., Inc.*, 2007 MT 159, ¶ 30, 338 Mont. 41, 164 P.3d 85, ("office of the judgment is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted"). Likewise, the definitions Bardos cites merely provide that "ingress" is "[t]he act of entering" and "egress" is "the act of going out or leaving." *Black's Law Dictionary* (11th ed. 2019). Those definitions do not say that active movement is required at all times. *See id.*

Stopping or parking can occur during, or be part of, the acts of entering or leaving. Stopping for stop signs, pedestrians, or removing obstructions from the road are all examples of stopping, but they do not bring the acts of coming or going outside the definitions of ingress or egress. Moreover, those examples are indisputably reasonably necessary to fully enjoy an ingress/egress easement. The parking in this case is more unique due to the circumstances, including the topography of the road, but it is no less incidental to, and reasonably necessary to

fully enjoy, the ingress/egress right.

Other jurisdictions recognize parking of this type is within the scope of an ingress/egress easement. *See Keeler v. Haky*, 325 P.2d 648, 651 (Cal. Dist. Ct. App. 1958) (finding easement language comparable to "ingress and egress" and implying, while such an easement excludes "right to permanently park vehicles thereon," it would include "occasional or temporary parking that normally accompanies the movement of vehicles in and out of, or over, a location"); *Leasehold Estates, Inc. v. Fulbro Holding Co.*, 136 A.2d 423, 436 (N.J. Super. Ct. App. Div. 1957) (indicating "unrestricted easement of ingress and egress … might even include temporary parking"); *see also Sam's Food Distribs., Inc. v. NNA&O, LLC*, 73 V.I. 453, 473 (V.I. 2020) ("easement for ingress and egress does not include the right to park vehicles on Lot 171 beyond the incidental right to temporarily stop or park commercial vehicles for the purpose of loading and unloading commercial goods") (emphasis added); *Heavner v. Three Run Maint. Ass'n*, 2020 W. Va. LEXIS 359, at *21-22 (W. Va. June 10, 2020) ("temporarily parking in occupied vehicles while awaiting a school bus or occasional parking while awaiting a clearing of the hazardous icy hill leading into the subdivision could hardly be construed as an expansion of a roadway easement or 'foreign' to its use") (emphasis added); *Saksa v. Isabelle*, 2018 Conn. Super. LEXIS 6006, at *24 (Conn. Super. Ct. Jan. 16, 2018) ("defendant, his guests, and his invitees have

the right to ingress and egress over the access road and gravel parking area on the plaintiff's property, but may not park on the plaintiff's property other than temporarily and for a reasonable amount of time to discharge supplies, goods, and passengers onto the defendant's property") (emphasis added); *DP 21 LLC v 269 N. Bedford Rd. Mt. Kisco Corp.*, 63 N.Y.N. S.3d 643, 646 (N.Y. Sup. Ct. 2017) (declaring 50'-wide easement "for ingress and egress over" premises may be used to temporarily park vehicles to load and unload deliveries to businesses, where such reasonable use was necessary and convenient for purpose for which easement was created); *Steinkamp v. Hodson*, 718 A.2d 107, 111 (D.C. 1998) ("'reasonable use and enjoyment . . . for purposes of ingress and egress' includes temporarily detaining a vehicle within that driveway for the purposes of loading and unloading people and parcels") (emphasis added).

These holdings are consistent with existing Montana law. *See Mattson I,* ¶ 37 (holding the grant of an easement right includes the right to do that which is reasonably necessary to enjoy it); *see also McCauley*, ¶ 49 (holding "ingress and egress" easement was "designed for the access of the owners," without limitation as to the type of conduct associated with such access); *O'Keefe v. Mustang Ranches HOA*, 2019 MT 179, ¶ 30, 396 Mont. 454, 446 P.3d 509 ("temporary incidental parking" is permitted within a platted roadway "ingress and egress" easement); *Sampson v. Grooms*, 230 Mont. 190, 197, 748 P.2d 960, 964 (1988)

(enjoining "long term parking and storage of vehicles" on "private road" easement but permitting "reasonable and necessary short term parking of vehicles to load and unload cargo or passengers").

Bardos attempts to misconstrue the parking at issue as prolonged storage or staging. It was not. Although Spoklie initially asked Bardos if he could use the meadow for a "staging area for two or three pieces of road machinery and stockpile some crushed gravel," Bardos acknowledged Spoklie never engaged in such conduct. CR 12, Ex. 2; HT, 77:14-78:15; 117:8-10. The occasional, temporary "parking" that occurred along the road was completely different. HT, 77:14-78:15, 116:16-25. Bardos merely labels Spoklie's conduct "staging" to make it seem less consistent with "ingress and egress."

Likewise, Bardos' reference to parking in the "meadow" is misleading. *See* CR 36, p. 14-16 (citing HT 29:14-32:5; 45:2-46:20). The area where Spoklie was parking the vehicles was just off the road, but within the Easement, on the southern edge of the meadow. HT 115:7-118:13, 151:23-155:14, 171:1-15. This parking within the "meadow" is within the Easement area, as discussed above.

Mr. Wyant acknowledged that he once parked a vehicle further than 30 feet from the centerline of the road, but Bardos offers no evidence that occurred when the Easement Agreement was in place, and there is no such evidence. HT 118:14-22. In fact, the only reference to the timing of that incident was that it occurred

when they "first started." *Id.* Spoklie bought his property months before Bardos bought his, and months before the Easement Agreement was in place. *Compare* CR 12, Ex. A, *with* Cr 9, Ex. 3. This is not sufficient evidence to create a disputed issue of material fact; instead, it is speculation, which is insufficient to defeat summary judgment. *Ereth v. Cascade Cnty.*, 2003 MT 328, ¶ 11, 318 Mont. 355, 81 P.3d 463 (holding speculation not enough to raise genuine issue of material fact to defeat summary judgment).

Bardos cites a number of cases which he contends support his argument that Spoklie's conduct is not within the scope of ingress/egress. In *Sampson v. Grooms*, Grooms continuously parked and stored vehicles on a twelve-foot-wide easement, blocking use of the easement by any other vehicles, including use by the servient owner of the property. 748 P.2d at 963. The Court recognized that allowing exclusive use of a roadway easement that would effectively preclude use of the roadway by the owner of the land on which it sat would almost amount to a conveyance of a fee interest in the property. *Id.*, 230 Mont. At 196, 748 P.2d at 963. The Court held that an easement for a "private road" does not indicate an intent to create an "'exclusive' easement" for parking and storage. *Id.* An easement for a "private road" does not convey a right for the dominant tenement to use it as a "driveway." *See id.*

This case is critically different from *Sampson*. Spoklie was not using the

easement as a driveway, continuously parking in it and blocking Bardos and anyone else from using it. Instead, Spoklie merely occasionally and temporarily parked off the side of the road as part of the process of transporting those vehicles along the Easement. *Sampson* does not support Bardos' argument.

The out-of-state cases Bardos cites are similarly distinguishable. Those cases involved instances of dominant tenements parking on easements in the traditional sense, such as parking in a driveway or a parking lot to stay at a location for an extended period. *See Hall v. Altomari*, 562 A.2d 574 (Conn. App. Ct. 1989) (holding party's parking of as many as five cars at a time while using residence, with no argument it was incidental to ingress/egress, was outside scope of ingress/egress easement); *Kwolek v. Swickard*, 944 N.E.2d 564 (Ind. App. 2011) (holding party's parking of vehicles in easement in same manner they would park in their garage, with no argument it was incidental to ingress/egress, was outside scope of ingress/egress easement); *Avery Dev. Corp. v. Village by the Sea Condo Apartments, Inc.*, 567 So.2d 447, 448-49 (Fla. Dist. Ct. App. 1990) (holding condo owners could not use ingress/egress easement to park while staying at condos); *Franco v. Piccilo*, 49 A.D.3d 1182, 1183 (N.Y. App. Div. 2008) (holding ingress/egress easement did not convey right to use for parking as if it were driveway); *Cleveland v. Clifford,* 698 N.E.2d 1045, 1047-48 (Ohio Ct. App. 1997) (holding "drive easement" did not allow parking by patrons while using

restaurant).

None of those cases have facts similar to this case. Spoklie did not park construction vehicles in the Easement for extended periods of time as a means of storing them to be used again later, like one would park a car in a lot, in a driveway, or alongside a curb. This was temporary parking off the side of the road as part of the process of moving equipment over the Easement. Moreover, two of those cases are from jurisdictions that have found facts that are more similar to this case to be within the scope of ingress/egress. *See Saksa*, *supra*; *DP 21*, *supa*. Bardos cites no case, and there is none, holding "ingress and egress" solely includes moving along a roadway and excludes any temporary stoppage or parking that is a part of such movement.

The District Court's decision does not improperly insert the term "parking" into the Easement, as Bardos argues. CR 36, p. 13. Instead, it correctly interprets the existing terms "ingress" and "egress" as including or allowing such temporary parking because such parking was a part of ingress and egress.

In summary, the scope of the Easement is for "ingress and egress." The conduct at issue involved temporary parking of construction vehicles, but that was part of the ingress and egress process for those vehicles. Therefore, it was within the scope of the Easement.

b. The Removal of Boulders Alongside the Easement Was Within the Scope of the Easement.

Mr. Wyant's removal of boulders alongside the roadway was also within the scope of the Easement. Notwithstanding the fact that Spoklie's parking of vehicles off the side of the road was within his Easement rights, Bardos attempted to stop it by blocking that portion of the Easement with boulders. Mr. Wyant removed the boulders so he could continue to get the construction vehicles in and out along the Easement without blocking the roadway. Aff. Spoklie; Aff. Wyant. Maintaining an easement, including removing obstructions, is within the permissible scope of use of the easement. *See Woods*, ¶ 15 ("the holder of an easement 'has not only the right but the duty to keep it in repair,' and thus is permitted to perform maintenance, repair, and improvements."); *Harrer v. N. Pac. Ry.*, 147 Mont. 130, 137, 410 P.2d 713, 716-717 (1966) ("Where a permanent easement has once been acquired over the lands of another, and the ditch or canal has once been constructed, the owner of the primary easement has the right, as a secondary easement, to go upon the lands and remove obstructions from the ditch, or to make other repairs necessary, consistent with the full enjoyment of the easement").

Bardos insinuates, within the background section of his brief, that Mr. Wyant's removal of boulders was an effort to construct a cul-de-sac in the Easement. There is no evidence supporting such a contention. To the contrary, Mr. Wyant denies Bardo's contention he was constructing a cul-de-sac. HT 119:11-17,

127:4-7. Tellingly, Mr. Wyant only disturbed the ground in the process of removing the boulders, and there is no evidence of any intention or attempt to bulldoze a cul-de-sac. *See* Ex. 7. Bardos' argument to the contrary is pure speculation which cannot defeat summary judgment. *See Ereth*, ¶ 11. This is simply another attempt by Bardos to misconstrue the undisputed facts to make it appear that Spoklie was acting outside the scope of the easement. Removal of the boulders was within Spoklie's Easement rights.

c. The Installation of a Cluster Mailbox Would Be Within the Scope of Spoklie's Easement Rights.

Spoklie's desire to replace the existing mailboxes alongside Daley Lane has not even occurred, so it is not ripe for adjudication. *Advocates for Sch. Trust Lands v. State*, 2022 MT 46, ¶ 20, 408 Mont. 39 ("A case is considered ripe when it presents an 'actual, present' controversy that is not a hypothetical or speculative dispute."). Therefore, Bardos lacks standing to pursue it. *See id.*, ¶ 19 ("Ripeness and mootness, in turn, can be seen as 'the time dimensions of standing.'").

Regardless, even if this claim were ripe, the installation of new mailboxes would be within Spoklie's easement rights. Placement of mailboxes facilitates ingress and egress to Spoklie's property for purposes of postal delivery. *See Snyder v. Eberts*, 2006 Wisc. App. LEXIS 1152, at *17 (Wis. Ct. App. Dec. 6, 2007) ("Placement of the mailbox and trash receptacles in the easement area facilitates ingress and egress from the dominant estate for purposes of postal delivery and

trash pick up."); *see also Lawson v. Sipple*, 893 S.W.2d 757, 761 (Ark. 1995) ("The 'public use' that is encompassed by the grant of an easement for a public street is sufficient to include the delivery of mail."); *Miller v. Nichols*, 526 A.2d 794, 796 (Pa. Super. Ct. 1987) (holding mailboxes serve public purpose and may be maintained within right of way of township road without permission from underlying property). Therefore, it would be within the scope of the Easement.

Moreover, the mailboxes are so close to the intersection where Deer Run leaves Daley Lane that they are not only within the subject Easement, but they are also within the 60-foot county road easement still associated with Daley Lane. HT 120:20-121:18. County road easements include not just the right to use the surface of the road for driving, but also the right to the incidents necessary to enjoy the road. *Public Lands Access Ass'n v. Bd. of Cnty. Comm'rs*, 2014 MT 10, 373 Mont. 277, ¶ 24, 321 P.3d 38, (citing § 7-14-2107(3), MCA). Flathead County's Public Works Director, who is the person in charge of such matters, confirmed mailboxes are permitted within county road easements. HT 109:2-13.

Thus, Spoklie's intended replacement of existing mailboxes would be permissible through his rights under two separate easements.

II. Bardos' Trespass Claim Fails because Spoklie's Conduct Occurred Within the Easement Area

Civil trespass "is an intentional tort claim for damages caused by an unauthorized entry or holdover upon real property of another." *Davis v. Westphal*,

2017 MT 276, ¶ 15, 389 Mont. 251, 405 P.3d 73. The elements of trespass are "an intentional entry or holdover (2) by the defendant or a thing; (3) without consent or legal right." *Id.* "Conduct that would otherwise constitute an intentional trespass is not unlawful if it is privileged conduct pursuant to an easement." *Lee v. Musselshell Cnty.*, 2004 MT 64, ¶ 30, 320 Mont. 294, 87 P.3d 423 (emphasis added). Bardos alleges Spoklie trespassed by "walking, driving, bulldozing or parking on the Trust's Land." Complaint, ¶ 42. As explained in the preceding section, however, all such conduct was within the permissible scope of the Easement. Therefore, it does not constitute unlawful trespass.

III. Bardos' Nuisance Claim Fails because It Is Based on Conduct That Is Within the Scope of the Easement

Montana defines a nuisance as "Anything that is injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or that unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, river, bay, stream, canal, or basin or any public park, square, street, or highway is a nuisance." § 27-30-101(1), MCA. To constitute a nuisance, "the annoyance, interference, or injury must, however, be a substantial one." *Iverson v. Dilno*, 44 Mont. 270, 119 P. 719, 721 (1911). "There is liability for a nuisance only to those to whom it causes significant harm, of a kind that would be suffered by a normal person in the community or by property in normal condition and used for a normal

purpose." Restatement (Second) of Torts § 821F. "The law does not concern itself with trifles, and therefore there must be a real and appreciable invasion of the plaintiff's interests before he can have an action for either a public or a private nuisance. … [I]n the case of a private nuisance, there must be a real and appreciable interference with the plaintiff's use or enjoyment of his land before he can have a cause of action." *Id.*, cmt c. Mere annoyances, friction, or inconveniences with neighbors do not rise to the level nuisance. Restatement (Second) of Torts § 822, cmt on clause (a).

A nuisance claim must plead a factual foundation that satisfies governing legal standards. *Martin v. Artis*, 2012 MT 249, ¶ 14, 366 Mont. 513, 290 P.3d 687. Bardos does not make clear which factual allegations he contends support his nuisance claim, but it appears he is pointing to Spoklie depositing construction equipment on his property. CR 36, p. 24. That conduct, however, is merely Spoklie using the Easement within its scope. Using an easement for its stated purpose does not constitute a nuisance. Recognizing such conduct as an adequate basis for a nuisance claim would open the floodgates to such claim and undermine the public's trust in, and use of, easements in general.

The *Rubin v. Hughes* case Bardos cites contradicts his argument and implies that conduct that is within the scope of an easement is not a nuisance. 2022 MT 74, 408 Mont. 219, 507 P.3d 1169. The case explains:

> The Hugheses argue the District Court abused its discretion when it granted Rubin's motion in limine to exclude evidence supporting the Hugheses' belief that Rubin granted them an easement. The Hugheses contend their belief that Rubin granted an easement justified their behavior and the exclusion of such evidence impaired their defense and precluded their ability to present the whole picture of the parties' relationship to the jury.
>
> Rubin and Hauth respond that, assuming such a promise was made, the Statute of Frauds renders it unenforceable and that the District Court correctly excluded the evidence. The Hugheses concede that evidence of an unenforceable agreement would typically be excluded but argue an exception is necessary to explain their conduct to the jury.
>
> The District Court did not abuse its discretion. Rubin and Hauth brought a nuisance claim against the Hugheses. The existence, or lack thereof, of an easement is not probative to whether the Hugheses' behavior interfered with Rubin and Hauth's enjoyment of their property or whether the Hugheses acted with actual malice. A nuisance claim does not ask whether a party believed its actions were justified. Nor may the Hugheses defeat the evidence of actual malice by arguing they had a good reason for their actions. As the District Court noted, **a distinction exists between believing a property owner should grant you an easement and actually possessing an easement**. The Hugheses' relentless hostility and intimidating behavior would not in any event have been justified by the evidence they sought to introduce.

Rubin, ¶¶ 56-58 (emphasis added).

Thus, *Rubin* held a party's mere belief about whether they have an easement right does not justify conduct or save it from being a nuisance. The Court then noted that a belief about an easement and an actual easement are distinct, implying the actual existence of an easement would prevent the existence of a nuisance. The lawful use of an easement cannot form the basis for a nuisance claim.

Moreover, Bardos cannot satisfy the requirement for the damage to have been substantial. It was not. The mere fact Spoklie parked vehicles on Bardos' property a handful of times, within the Easement area, does not constitute a nuisance. Even construing all facts in Bardos' favor, no valid nuisance claim exists.

CONCLUSION

For the foregoing reasons, Spoklie respectfully requests that the Court affirm the District Court's granting of Spoklie's motion for summary judgment.

Dated this 1st day of March, 2024.

HAMMER, QUINN & SHAW PLLC

/s/ Thomas A. Hollo
Marcel A. Quinn
Thomas A. Hollo
P.O. Box 7310
Kalispell, MT 59904-0310
Attorneys for Defendant Robert L. Spoklie

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4)(e) of the Montana Rules of Appellate Procedure, I certify that this brief is proportionately spaced Times New Roman text typeface of 14 points, is double spaced, and the word count calculated by Microsoft Word 2010, is not more than 5,963 words, excluding the certificate of compliance.

CERTIFICATE OF SERVICE

I, Thomas Alan Hollo, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 03-01-2024:

Kimberly S. More (Attorney)
219 E. Center Street
P.O. Box 759
Kalispell MT 59901
Representing: Paul Phillip Bardos and Mary L. Bardos Bardos Revocable Trust
Service Method: eService

Marcel A. Quinn (Attorney)
Hammer, Quinn & Shaw PLLC
PO Box 7310
100 Financial Drive
Suite 100
Kalispell MT 59904-0370
Representing: Robert l. Spoklie
Service Method: eService

Electronically signed by Chelsea Chambers on behalf of Thomas Alan Hollo
Dated: 03-01-2024