

IN THE SUPREME COURT OF THE STATE OF
MONTANA

Case No. DA 24-0126

On Appeal from the Montana Twenty First Judicial District Court, Ravalli County
No. DV 41-2017-0000455-OC, the Honorable Jennifer B. Lint, Presiding

**MEL COOK, LOEY KNAPP, JAMES WALTERS, DAVID MCKINLEY, SUSAN
EVANS, PAT GRONINGER, TERRI GRONINGER,**

Appellees,

vs.

BERTA'S FARM, LLC,

Appellant.

***DECLARATION OF GREG OVERSTREET IN SUPPORT OF
TOWN OF STEVENSVILLE'S MOTION TO INTERVENE AS APPELLEE***

Greg Overstreet
Overstreet Law Group
300 Main Street, Suite 203
Stevensville, Montana 59870
(406) 209-8592
greg@overstreetlawgroup.com
*Attorney for Proposed Intervenor Town
of Stevensville*

Timothy Bechtold
Bechtold Law Firm, PLLC
317 East Spruce Street
Missoula, MT 59807
(406) 721-1435
tim@bechtoldlaw.net
Attorney for Appellees

Thomas Orr
Orr McDonnell Law, PLLC
627 Woody Street
Missoula, MT 59802
(406) 543-0999
tom@omlmt.com
Attorney for Appellant

1. I am over 18 years of age and competent to testify in this matter.
2. I make this affidavit on my oath and under penalty of perjury.
3. I am counsel for proposed intervenor Town of Stevensville.
4. I received a letter dated March 18, 2024 from counsel for Appellant, a true and correct copy of which is attached hereto as Exhibit 1.

Signed this 26th day of March 2024 in Stevensville, Montana.

By: Greg Overstreet
Greg Overstreet

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of March, 2024, I served upon the following a true and correct copy of the foregoing by e-File:

Timothy Bechtold
Bechtold Law Firm, PLLC
317 East Spruce Street
Missoula, MT 59807
(406) 721-1435
tim@bechtoldlaw.net
Attorney for Appellees

Thomas Orr
Orr McDonnell Law, PLLC
627 Woody Street
Missoula, MT 59802
(406) 543-0999
tom@omlmt.com
Attorney for Appellant

/s/ Greg Overstreet
Greg Overstreet

Thomas C. Orr, Esq.
Gregory A. McDonnell, Esq.
Cathryn I. Arnø, Esq.



627 Woody Street
Missoula, MT 59802
Tel: 406-543-0999
Fax: 406-552-0560
www.omlmt.com

ORR MCDONNELL LAW, PLLC

March 18, 2024

Greg Overstreet, Esq.
Stevensville Town Attorney
206 Buck Street
Stevensville, MT 59870
Via U.S. Certified Mail

**Re: Response to Letter of February 20, 2024
Cook, *et al.* v. Berta's Farm, LLC**

Dear Mr. Overstreet:

I represent Berta's Farm, LLC. I am in receipt of your letter dated February 20, 2024. In that letter, you indicate that the "Town will comply with the Court's February 14, 2024, Order that the Town abate [my client's] nuisance and assess costs against the property." I am troubled by your letter for a number of reasons which I will outline below:

1. The Town was not a party to these proceedings. Thus, the Court's Order directing the Town to "conduct abatement activities within 60 days of the entry of this Order..." seems misplaced. Judge Langton dismissed the Town as a Party on May 11, 2018.
2. The abatement order itself is unclear:
 - a. Sidewalks: there are no sidewalks. Please identify the areas where you claim sidewalks exist and the alleged obstructions existing on said sidewalks.
 - b. Inoperable Vehicles: My client is not aware of any "inoperable vehicles" on the property. Please identify by make, model and year each such "inoperable vehicle" you contend to be on the property and state the reason that you believe to be inoperable, setting forth any and all facts upon which you rely in making your conclusion.

- c. Junk and Debris: My client is not aware of any junk or debris. Please identify what you consider to be junk or debris that exists on the property.
- d. Noxious weeds: There have never been any “noxious weeds” identified on the property. As you know, the term “noxious weeds” has a specific meaning in Montana law. Mont. Code Ann. § 7-22-2101(9) defines the term thusly:
 - (a) “Noxious weeds” or “weeds” means any exotic plant species established or that may be introduced in the state that may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial uses or that may harm native plant communities and that is designated:
 - (i) as a statewide noxious weed by rule of the department;
or
 - (ii) as a district noxious weed by a board, following public notice of intent and a public hearing.
 - (b) A weed designated by rule of the department as a statewide noxious weed must be considered noxious in every district of the state.
 - (c) Marijuana, as defined in 16-12-102, may not be considered a noxious weed.

Please provide a list of all “noxious weeds” that you contend exists on the Berta’s Farm, LLC parcel. Also, please identify the Town Ordinance or Code section that provides that the Town has the authority to address issues involving “noxious weeds.” It appears that this is something that falls under the purview of the county weed control district. *See, e.g. Mont. Code Ann. § 7-22-101, et. seq., generally.*

- e. Overgrown Vegetation Removal: Since the hearing on this matter from which the Court’s Order is derived occurred nearly 3 ½ years ago, please identify all issues of concern to the Town regarding overgrown vegetation.
- f. Nonconforming and Dangerous Structures: Please identify all structures on the property that the City considers to be “nonconforming and/or dangerous. At least one of the structures is a home, that is occupied by a man, his wife and 12-year-old daughter. The home has a building permit, and the man and his family, are authorized occupants who have been working on the property for some time. We expect you to specify which buildings are allegedly dangerous and/or nonconforming before any action is taken to remove or interfere with their use.

Gregory Overstreet
March 18, 2024
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- g. Compliance with Applicable Town Ordinances: Please specify each and every Town Ordinance that you contend my client is in violation of and what you propose to be necessary for my client to bring the property into compliance with said town ordinances.

In sum, it is our position that the Court has exceeded its jurisdiction by issuing an Order to the Town to take action that was not even prayed for in the Complaint. More importantly, it has issued an Order to the Town, which is not enforceable because the Town is a stranger to these proceedings.

We ask you to put a hold on your abeyance activities until our issues are resolved on appeal. I would advise you that the Town is not authorized to enter onto my client's property and any such entry shall result in a civil rights lawsuit being filed against the Town in State or Federal Court. I trust you will understand the ramifications of a knowing violation of my client's constitutional rights.

Notwithstanding the foregoing, we recognize that there may be issues of mutual concern to the Town and the property owner. We are willing to discuss this with the Town. I would like to meet with you and see if we can address these issues in a productive, non-adversarial manner. I hope you will agree that that would serve the interests of the community as well.

Please feel free to contact me if you have any questions.

Sincerely,

ORR M^cDONNELL LAW, PLLC

By:



Thomas C. Orr

cc: Client