

**IN THE SUPREME COURT OF THE STATE OF MONTANA**

Cause No. DA 24-0322

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STEVEN CORRY STEPHENSON, as trustee of the Steven Corry Stepheson  
Trust, amended and reinstated Sept. 20, 2000;

*Appellant,*

v.

LONE PEAK PRESERVE, LLC, an Ohio Limited Liability Company;

*Appellee.*

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**APPELLEE LONE PEAK PRESERVE'S MOTION TO DISMISS APPEAL**

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On Appeal from the Montana Eighteenth Judicial Court, Gallatin County,  
Cause No.: DV-16-2021-0001297-DK  
Honorable John C. Brown

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## **STATEMENT OF THE ISSUE**

Appellee, Lone Peak Preserve, LLC (“Lone Peak”), respectfully moves this Court for an Order dismissing Appellant Steven Corry Stephenson’s (“Stephenson”) appeal on the grounds that the case is not ripe for appeal pursuant to M. R. App. P. 6(3). The District Court’s Order Granting Preliminary Injunction dated December 8, 2023 (“Order”) was not the “final decision on the referenced matter.” In the Order, the District Court issued a preliminary injunction and indicated that it would separately enter findings of fact and conclusions of law to support the preliminary injunction. Because the District Court has not yet issued those findings of fact and conclusions of law, the Order is not the final decision on the referenced matter and is therefore not appealable.

Opposing counsel has been contacted and opposes this Motion. *See* M. R. App. P. 16(1).

## **BACKGROUND**

This case arises from an easement dispute. Lone Peak filed a motion for a temporary restraining order and preliminary injunction to enjoin Stephenson from installing any improvements or structures within Lone Peak’s easements and from otherwise interfering with and/or obstructing Lone Peak’s easements during the pendency of the litigation. (Docs. 61 & 62, Motion for Temporary Restraining Order and Preliminary Injunction and Brief in Support). Lone Peak also asked the

Court to order Stephenson to remove all improvements or structures placed within Lone Peak's easements and to remove any other interferences with or obstructions of Lone Peak's easements. *See id.* After Stephenson filed two response briefs to Lone Peak's Motion (Docs. 63 & 67, Responses in Opposition to Motion for Restraining Order and Preliminary Injunction), the Court entered the Temporary Restraining Order requested by Lone Peak. (Doc. 70, Temporary Restraining Order and Order to Show Cause).

Thereafter, the Court held a show cause hearing. At the end of the show cause hearing, the Court ordered the parties to submit proposed findings of fact and conclusions of law regarding Lone Peak's Motion for Preliminary Injunction, which both parties did. *See* Docs. 85 & 86, Proposed Findings of Fact and Conclusions of Law). The Court then entered an Order Granting Preliminary Injunction ("Order"). *See* Appendix 1, Doc. 89, Order Granting Preliminary Injunction. Stephenson's present appeal is taken from that Order.

In the Order, the District Court granted the preliminary injunction requested by Lone Peak based on the evidence presented at the show cause hearing. *See id.* The District Court specifically stated: "The Court's Findings of Fact, Conclusions of Law, and Preliminary Injunction will be filed on or before December 15, 2023." *See id.* Although the District Court indicated that it intends to enter findings of fact conclusions of law to support the preliminary injunction, it has not yet done

so. Nevertheless, on May 21, 2034, Stephenson filed a Notice of Appeal on the District Court's Order. Prior to filing the appeal, Stephenson did not file a request with the District Court to enter findings of fact and conclusions of law as set forth in the District Court's Order.

### **ARGUMENT**

M. R. App. P. 6(3)(e) permits parties to appeal from certain interlocutory orders, including “an order granting or dissolving . . . an injunction.” However, such interlocutory orders are only appealable “**provided that the order is the court's final decision on the referenced matter.**” M. R. App. P. 6(3) (emphasis added).

Here, the District Court's Order is not the District Court's “final decision” on Lone Peak's Motion for Preliminary Injunction. In its Order, the District Court indicated that it would be entering findings of fact and conclusions of law to support the preliminary injunction, but it has not done so yet. Because the District Court has not entered its findings of fact and conclusions of law, its Order was not the “final decision” on Lone Peak's Motion for Preliminary Injunction. As a result, the Order is not appealable.

Further, this Court has repeatedly held that when a preliminary injunction order entered by a district court does not set forth findings of fact and conclusions of law, this Court is unable to conduct adequate appellate review. *Snavelly v. St.*

*John*, 2006 MT 175, ¶ 18, 333 Mont. 16, 140 P.3d 492. It is not this Court’s job to make findings of fact or conclusions of law. *Snavely*, 19. “Rather, it is this Court’s function to determine whether the trial court’s findings of fact are clearly erroneous and whether its conclusions of law are correct.” *Id.* The District Court has not yet entered its findings of fact and conclusions of law and, therefore, this appeal is premature.

Under the Montana Rules of Appellate Procedure and the applicable case law, Stephenson’s appeal should be dismissed. The District Court’s Order is not the District Court’s “final” decision on Lone Peak’s request for a preliminary injunction as the District Court’s Order expressly indicates the District Court will be issuing findings of fact and conclusions of law. Further, this Court is unable to conduct an adequate appellate review because the District Court has not yet issued its findings of fact and conclusions of law. *See Snavely*, ¶ 18.

Accordingly, dismissal of this appeal would best serve judicial economy. If Stephenson’s appeal is taken at this time, and presuming for the sake of argument that Stephenson is successful on appeal, then this will almost certainly be the first of two appeals on this preliminary injunction issue. Without a final preliminary injunction order from the District Court, a successful appeal from Stephenson would likely result in a remand to the District Court for its entry of findings of fact and conclusions of law. *Snavely*, ¶ 10. And, once the District Court entered such

findings of fact and conclusions of law, the issue would need to come back to this Court for a second time for any appeal on the merits of the District Court's decision. This two-step appeal process – first on a procedural issue and then on the merits – would be a waste of the Court's and the parties' resources. Dismissing this appeal now and only allowing Stephenson to appeal once the District Court has issued its “final decision on the referenced matter” would best preserve the Court's and parties' time and resources.

### **CONCLUSION**

The Order is not appealable, and Stephenson's appeal is premature. Lone Peak accordingly requests the Court dismiss Stephenson's appeal.

DATED this 17<sup>th</sup> day of June, 2024.

CROWLEY FLECK PLLP

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## **CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 16(3) of the Montana Rules of Appellate Procedure, I certify that this Motion is printed with a proportionately spaced Times New Roman text typeface of 14 points, is double spaced; and the word count calculated by Microsoft Word is not more than 1,050 words, excluding certificate of service and certificate of compliance.

CROWLEY FLECK, PLLP

By: /s/Kelsey Bunkers  
Kelsey Bunkers

## **CERTIFICATE OF SERVICE**

I, Kelsey Bunkers, one of the attorneys for the law firm of Crowley Fleck PLLP, hereby certify that on the 17<sup>th</sup> day of June, 2024, I mailed a true and correct copy of the foregoing document, postage prepaid, to the following:

Michael Rabb  
The Rabb Law Firm, PLLC  
3950 Valley Commons Drive, Suite 1  
Bozeman, MT 59718

/s/Kelsey Bunkers

Kelsey Bunkers



## **CERTIFICATE OF SERVICE**

I, Kelsey Evans Bunkers, hereby certify that I have served true and accurate copies of the foregoing Motion - Opposed to the following on 06-17-2024:

Michael Lloyd Rabb (Attorney)  
3950 Valley Commons Drive  
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Representing: Steven Corry Stephenson  
Service Method: eService

Electronically Signed By: Kelsey Evans Bunkers  
Dated: 06-17-2024