

SUPREME COURT OF THE STATE OF MONTANA

CASE NO. DA 24-0322

STEVEN CORRY STEPHENSON, as trustee of the Steven Corry Stephenson
Trust amended and reinstated September 20, 2000

Appellant

vs.

LONE PEAK PRESERVE, LLC,

Appellee.

**RESPONSE IN OPPOSITION TO APPELLEE LONE PEAK PRESERVE,
LLC'S MOTION TO DISMISS APPEAL**

On Appeal from the Montana Eighteenth Judicial District, Gallatin County
Cause No. DV 16-2021-0001297-DK
Before Hon. John C. Brown

Appearances:

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INTRODUCTION

Appellant Steven Corry Stephenson (“Stephenson”) appeals from the District Court’s Order Granting Preliminary Injunction dated December 8, 2023 (“Order”), arguing that it does not comply with §27-19-105, MCA. Appellee’s Motion to Dismiss (“Motion”) does not dispute this but requests the Court dismiss the appeal as premature since the District Court has not first issued supporting findings of fact and conclusions of law. Despite Lone Peak’s protestations, the Order specifies a deadline for such findings and conclusions, which has passed without any being filed. Undeterred by this, Lone Peak contends that the improperly ordered injunction against Stephenson (“Injunction”) should remain in place, and that Stephenson must wait for a valid order from the District Court before appealing. All the while Stephenson’s right to use his property remains infringed with no certainty that the District Court will ever issue any findings and conclusions.

STATEMENT OF THE ISSUE

The issue presented by Stephenson is whether the Order, is a lawful order granting an injunction. The issue presented by the Motion is whether Stephenson’s appeal is premature.

ARGUMENT

Montana law provides that an order granting an injunction shall:

- (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.

§ 27-19-105, MCA. Further, M.R.Civ.P. 52(a)(2) provides that in granting an interlocutory injunction, a court must state the findings and conclusions that support granting the injunction.

Here, the Order describes the scope of the Injunction only by reference to another document filed by Lone Peak. (Doc. 89). The Order fails to describe in reasonable detail the acts sought to be restrained. The Order then further states “[t]he Court’s Findings of Fact, Conclusions of Law, and Preliminary Injunction will be filed on or before December 15, 2023.” *Id.* The District Court’s Order explicitly acknowledges both that no findings of fact or conclusions of law supporting the Injunction have been stated and that the reasons for the issuance of the Injunction have not been set forth. The Order clearly does not meet the requirements under §27-19-105, MCA and M.R.Civ.P. 52.

More than 150 days after the last date on which the Order indicated that its Findings of Fact, Conclusions of Law, and Preliminary Injunction would be filed, no such findings and conclusions were issued, and the Court had not notified the parties of any future for an additional order. Therefore, Stephenson reasonably

concluded that the Order is properly treated as the Court's final decision on the matter of the Injunction. The Motion does not dispute the fact that the Order fails to meet the requirements from §27-19-105, MCA and it does not dispute that no subsequent order regarding to the Injunction has issued. Consequently, Lone Peak concedes that there are good grounds for an appeal pursuant to M.R.App.P. 6(3)(e).

Although the Motion does not dispute that the Order fails to adhere to Montana's statutory requirements for an order granting an injunction, Lone Peak nonetheless contends that Stephenson's appeal is premature. Lone Peak claims that the Order is not the District Court's 'final' decision on Lone Peak's request for a preliminary injunction since it indicates the Court will issue findings of fact and conclusions of law. (Motion, p. 4). That argument distorts the Order which states, in part, "[t]he Court's Findings of Fact, Conclusions of Law, and Preliminary Injunction will be filed *on or before December 15, 2023.*" (Doc. 89). The period allotted for findings of fact and conclusions of law to be filed *in the District Court's Order* closed months ago, and nothing in the Order indicates that such findings and conclusions will be filed subsequently to the self-imposed deadline. Nor have the parties received notice that such findings of fact or conclusions will be forthcoming. As such, neither the text of the Order nor the Court's subsequent silence regarding the Injunction support Lone Peak's hypothetical future in which a subsequent order stating the Court's 'final decision' will be issued. Rather than allow the existing

invalid Injunction to stand while Stephenson is forced to wait for something that may never come, this Court may treat the Order as a final decision from which an appeal may be taken.

Lone Peak also contends that Stephenson's appeal should be dismissed because this Court "is unable to conduct adequate appellate review" where a district court has not set forth findings and conclusions. (Motion, p. 3). Lone Peak asks the Court to overlook the District Court's patent failure to adhere to Montana's statutory requirements for injunctions and treat Stephenson's appeal as an appeal of a valid, properly ordered injunction. This Court need not be so indiscriminate. This Court held that a district court's failure to adhere to a statutory requirement in granting or denying an injunction constitutes "'obvious, evident, [and] unmistakable'" error, and amounts to a manifest abuse of discretion. *Flying T Ranch, LLC. v. Catlin Ranch, LP.*, 2020 MT 99, ¶ 15, 400 Mont. 1, 7, 462 P.3d 218, 222 (citation omitted). Further, where the Court finds such a failure to adhere to statutory requirements, it need not reach further substantive questions regarding the appropriateness of an injunction. *Id.* ¶¶ 13-15.

The Order does not adhere to Montana's requirements for an order granting an injunction from § 27-19-105, MCA and M.R.Civ.P. 52. That failure to adhere to these statutory requirements is the basis of Stephenson's appeal. As the District Court's *failure to issue* findings and conclusions is the issue under review, the Court

obviously need not review such findings and conclusions in taking up Stephenson's appeal. The Court can conduct appellate review to determine that the existing Injunction is invalid and unenforceable against Stephenson.

If the Court grants the Motion and dismisses Stephenson's appeal because of the District Court's failure to issue findings and conclusions that could lead to a slippery slope, resulting in a procedural loophole whereby an invalid injunction is insulated from appellate review precisely *because* it is invalid and has not been granted by a lawful order.

Finally, the Motion contends that Stephenson's appeal should be dismissed for reasons of judicial economy. Lone Peak speculates if this Court conducts appellate review, the Injunction may nonetheless come back to the Court for a second appeal on the merits and would be a waste of resources. (Motion, p. 5). The purely procedural nature of Stephenson's appeal minimizes this concern. As there are no findings and conclusions to review, and the Order manifestly fails to adhere to the statutory requirements, the Court may decide Stephenson's appeal efficiently. More importantly, considerations of judicial economy should not lead this Court to allow a substantively unlawful order to stand. Dismissing Stephenson's appeal for judicial economy would protect a district court's invalid injunction from appellate review if the district court withheld a subsequent order meeting Montana's statutory

requirement. Stephenson's appeal does not significantly impact judicial economy, and the Court has substantial reasons to disregard such considerations.

CONCLUSION

As stated, the Order is invalid as it fails to meet legal requirements and this Court should conduct appellate review on that issue. Therefore, Stephenson's appeal is not premature, and the Motion should be denied.

Dated: June 27, 2024

Respectfully submitted,

THE RABB LAW FIRM, PLLC

A handwritten signature in black ink, appearing to read 'm. l. rabb', written in a cursive style.

Michael L. Rabb
Attorney for Appellant

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 16 of the Montana Rules of Appellate Procedure, I certify that this Response Brief 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 1,250 words, excluding certificate of service and certificate of compliance.

Dated this 27th day of June, 2024.



Michael L. Rabb

Attorney for Appellant

CERTIFICATE OF SERVICE

I, Michael Lloyd Rabb, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Response to Motion to Dismiss to the following on 06-27-2024:

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Dated: 06-27-2024