SUPREME COURT OF THE STATE OF MONTANA

CASE NO. DA 24-0422

STEVEN CORRY STEPHENSON,

Plaintiff, Counter-Defendant, and Appellant

vs.

LONE PEAK PRESERVE, LLC,

Defendant, Counter-Plaintiff, and Appellee.

On Appeal from the Montana 18th Judicial District, Gallatin County
Cause No. DV 21-1297
Before Hon. John C. Brown

APPELLANT'S BRIEF

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ISSUES PRESENTED FOR REVIEW

The issues presented for review are as follows:

1. Whether the District Court erred in concluding that Appellee met the evidentiary burden required of a party seeking a preliminary injunction.
    a. Whether Lone Peak established that it is likely to succeed on the merits in its interference with easements claim;
    b. Whether Lone Peak established that it is likely to suffer irreparable harm in the absence of preliminary relief;
    c. Whether Lone Peak established that the balance of equities tips in its favor;
    d. Whether Lone Peak established that the injunction granted by the District Court is in the public interest.
2. Whether the District Court manifestly abused its discretion in granting a Preliminary Injunction which exceeds the limited purpose of preserving the *status quo*.

STATEMENT OF THE CASE

Plaintiff and Appellant Steven Corry Stephenson ("Stephenson") and Defendant and Appellee Lone Peak Preserve, LLC ("Lone Peak") own adjacent parcels of property near Big Sky. Upon commencing construction of a residence on its property in the fall of 2020, Lone Peak constructed a gravel driveway crossing Stephenson's property (the "Driveway"). Lone Peak used this Driveway with Stephenson's consent between fall 2020 and fall 2021, and Lone Peak's use of the Driveway represents the last actual, peaceable, noncontested condition between the parties as regards Lone Peak's use of Stephenson's property.

In December of 2021, Stephenson filed suit alleging trespass against Lone Peak, and Lone Peak then filed a counterclaim in June 2022 alleging that it holds two easements burdening Stephenson's property and that Stephenson is interfering with these easements. After both parties filed motions for summary judgment which remain pending before the District Court, Lone Peak in July 2023 asked the District Court to enjoin Stephenson from interfering with the two alleged easements identified in its counterclaim. Following an evidentiary hearing held in October 2023, the District Court entered an order granting the requested injunction on July 11, 2024 (the "District Court's Order"). Stephenson appeals from this Order.

The District Court erred in granting the injunction requested by Lone Peak for two reasons: First, Lone Peak failed to meet the evidentiary standard required of a

party seeking an injunction. Second, the requested injunction does not further the limited purpose of preserving the *status quo* prior to litigation; consequently, the District Court abused its discretion in granting the injunction sought by Lone Peak.

By statute, a party seeking a preliminary injunction must establish all of the following:

> (a) the applicant is likely to succeed on the merits;
> (b) the applicant is likely to suffer irreparable harm in the absence of preliminary relief;
> (c) the balance of equities tips in the applicant's favor; and
> (d) the order is in the public interest.

Mont. Code Ann. §27-19-201(1). Here, the evidence presented to the District Court does not support the Court's finding that Lone Peak established *any* of these four required elements, much less the finding that it established all four elements.

Principally, Lone Peak failed to establish that it is likely to suffer irreparable harm in the absence of preliminary relief. The District Court's Order concluded that Lone Peak demonstrated irreparable harm "because [Lone Peak] and others cannot safely and effectively access the Lone Peak Property." (Doc. 99, Conclusions of Law ¶ 24). The evidence before the Court was clear, however, that Lone Peak currently enjoys the same access it had under the *status quo* prior to litigation. Montana law provides that a preliminary injunction is properly granted only for the limited purpose of maintaining the *status quo*. See *Flying T Ranch, LLC. v. Catlin Ranch, LP.*, 2020 MT 99, ¶ 12, 400 Mont. 1, 6, 462 P.3d 218, 222. Here, Lone Peak

continues to use the same Driveway it used under the *status quo* and Stephenson has never installed any improvements or structures obstructing this Driveway. Consequently, any irreparable harm Lone Peak is likely to suffer today is an irreparable harm it was equally likely to suffer under the *status quo*—and consequently a harm that a preliminary injunction cannot address.

Lone Peak also failed to establish the other three elements required by statute: The evidence before the District Court does not establish that Lone Peak is likely to succeed on the merits: no evidence showing the validity of Lone Peak's alleged easements was presented at the evidentiary hearing, and Stephenson's briefing demonstrates that both of the easements claimed by Lone Peak are invalid. (*See* Doc. 67, pp. 8-10). The evidence also does not establish that the equities tip in Lone Peak's favor: while Lone Peak claims that it is entitled to have the access it desires this right must be balanced against Stephenson's right to use his property according to a standard of reasonableness. See *Musselshell Ranch Co. v. Seidel-Joukova,* 2011 MT 217, ¶ 19, 362 Mont. 1, 8, 261 P.3d 570, 575. And here such a standard favors Stephenson because the injunction granted by the District Court is not necessary to protect Lone Peak's unhindered use of its Driveway. Finally, the evidence does not establish that Lone Peak's requested injunction is in the public interest: while it may be in the public interest to ensure property owners' and emergency vehicles' access to property, the injunction granted here is not necessary to that purpose. Meanwhile,

the public interest is at least equally served by protecting property owners' rights to use and enjoy their property.

Separate from Lone Peak's failure to meet its evidentiary burden, the District Court manifestly abused its discretion in granting the injunction requested by Lone Peak because that injunction fails to preserve the *status quo*. The *status quo* here was established by Lone Peak's unobstructed use of its Driveway crossing Stephenson's property, which Lone Peak continues to enjoy today. Rather than address Lone Peak's use of the Driveway, however, the injunction granted by the District Court seeks to protect Lone Peak's use of the two alleged easements which are the subject of its counterclaim, prohibiting Stephenson from making improvements on his property and requiring him to remove existing improvements—even where such improvements have no effect on Lone Peak's use of its Driveway. The granted injunction thus not only fails to preserve the *status quo* but requires Stephenson to disturb that *status quo*, contrary to the purpose preliminary injunctions are to serve.

STATEMENT OF THE FACTS

1. Phillip H. Smith conveyed real property described as follows to Lone Peak through a Warranty Deed dated December 29, 2004, and Recorded January 18, 2005, in the official records of Gallatin County under Document No. 2176107 (the "Lone Peak Deed"):

> Lot 13 of Certificate of Survey No. 1754 A, located in Section 6, Township 7 South, Range 4 East, P.M.M., Gallatin County, Montana, according to the official plat thereof on file in the office of the County Clerk and Recorder of Gallatin County, Montana.

(Doc. 12, Exhibit 4 p. 1).

2. The Lone Peak Deed states, in part, that the above-described real property is conveyed

> together with a 30.00 foot wide easement for access and utilities over, under and across Lot 11, Certificate of Survey No. 1754A, according to the plat thereof on file and of record in the office of the Clerk and Recorder, Gallatin County, Montana. The location and description of said easement are shown on the attached exhibit A, which by this reference is made a part of this document.

(*Id.*)

3. Phillip H. Smith subsequently conveyed real property described as follows to Stephenson through a Warranty Deed dated August 10, 2010, and Recorded August 11, 2010, in the official records of Gallatin County under Document No. 2367485 (the "Stephenson Deed"):

> Lot 11 of Certificate of Survey No. 1754A, located in Section 6,

> Township 7 South, Range 4 East, P.M.M., Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder of Gallatin County, Montana.

(Doc. 12, Exhibit 5).

4. The Stephenson Deed states, in part, that the above-described real property is conveyed "SUBJECT TO…all building and use restrictions, covenants, easements, agreements, conditions and rights of way of record and those which would be disclosed by an examination of the property." (*Id.*).

5. The properties described in the Lone Peak Deed and the Stephenson Deed are depicted on Certificate of Survey 1754A, recorded in the official records of Gallatin County April 19, 1994, under Document No. 284745. ("COS 1754A"). (Doc. 12, Exhibit 3).

6. In addition to the properties described in the Lone Peak Deed and the Stephenson Deed, COS 1754A depicts a road easement labeled "60' ROAD EASEMENT (TYP)." (*Id.*).

7. An Affidavit of Dedication dated May 1, 1993, and recorded May 24, 1993, in the official records of Gallatin County, Montana under Document No. 264854 (the "Affidavit of Dedication") states, in part,

> The 60' access shown on Certificate of Survey No.s 1741 and 1754, located in Section 6, Township 7 South, Range 4 East, M.P.M., Gallatin County, Montana…[is] hereby granted as [an easement] for ingress, egress, and utilities for the use and benefit of the owners of all the tracts contained within Certificate of Survey no.s 1741 and 1754.

(Doc. 12, Exhibit 2).

8. In or about September 2020, Lone Peak began constructing a residence on the Lone Peak Property. (Doc. 1, ¶ 21; Doc. 3, ¶ 21)

9. Upon commencing construction of a residence on the Lone Peak Property in 2020, Lone Peak and its agents began using the Driveway to access Lone Peak's homesite. (Doc. 1, ¶ 22; Doc. 3, ¶ 22)

10. Lone Peak continues to use the Driveway to access its homesite. (Doc. 51, pp. 4-5; and *see* Exhibit A, 44:9-14)

11. Stephenson filed his complaint initiating this action in Gallatin County District Court on December 2, 2021, alleging trespass and seeking declaratory relief ("Stephenson's Complaint"). (Doc. 1).

12. Lone Peak filed its Counterclaim on June 7, 2022, alleging interference with easements and seeking Declaratory Judgment ("Lone Peak's Counterclaim"). (Doc. 12).

13. Lone Peak filed its Motion for Temporary Restraining Order and Preliminary Injunction and Brief in support on July 18, 2023 (the "Motion"). (Doc. 62).

14. The District Court entered its Temporary Restraining Order and Order to Show Cause on September 11, 2023, (the "TRO"). (Doc. 70.).

15. The TRO states, in part, that Lone Peak will suffer irreparable harm in

the absence of a temporary injunction "because Plaintiff's conduct is affecting the ability of Lone Peak and others, including fire trucks, to safely and effectively access the Lone Peak Property and has created serious safety concerns." (Doc. 70, p. 1).

16. The District Court held an evidentiary hearing on Lone Peak's Motion for Preliminary Injunction on October 10, 2023. (the "Hearing"). A transcript of proceedings for said Hearing is attached hereto as **Exhibit A**.

17. At the Hearing, Lone Peak testified through its member Eric Schertel that it has used the Driveway to access its residence since prior to Stephenson's lawsuit being filed in this matter. (Exhibit A, 44:9-14; 45:5-16)

18. At the Hearing, Lone Peak testified through its member Eric Schertel that the Driveway has never been obstructed by any boulders, logs, or posts. (Exhibit A, 46:6-11; 47:1-4, 9-10, 13-16).

19. At the Hearing, Stephenson testified that he installed a three-inch-high speed bump crossing Lone Peak's Driveway in the fall of 2022 (the "Speed Bump"). (Exhibit A, 77:8-24; 96:5-10).

20. At the Hearing, Lone Peak testified through its member Eric Schertel that it has never been prevented from accessing its residence because of the Speed Bump. (Exhibit A, 47:17-19).

21. Following the Hearing, the District Court entered its Order Granting Preliminary Injunction on December 8, 2023. (Doc. 89).

22. Stephenson filed a Notice of Appeal on May 21, 2024, appealing the District Court's Order Granting Preliminary Injunction. (*See* Supreme Court's Notice of Appeal, Doc. 93.)

23. On July 9, 2024, this Court dismissed Stephenson's appeal and found the District Court's Order Granting Preliminary Injunction invalid. (*See* Supreme Court's Order, Doc. 98)

24. Thereafter, the District Court entered its Findings of Fact, Conclusions of Law, and Order For Preliminary Injunction on July 11, 2024 (the "District Court's Order"). (Doc. 99).

25. The District Court's Order grants an injunction enjoining Stephenson "from installing any improvements or structures within Lone Peak's 30 foot easement and cul-de-sac easement…and from otherwise interfering with and/or obstructing Lone Peak's 30 foot easement and cul-de-sac easement during the pendency of this litigation," and further requiring Stephenson "to remove all improvements, structures, or obstacles placed within Lone Peak's 30 foot easement and cul-de-sac easement…and to remove any other interferences or impediments to Lone Peak's 30 foot easement and cul-de-sac easement." (hereafter the "Injunction")

26. The District Court's Order states, in part, "Lone Peak is likely to succeed on the merits because…it has made a prima facie case that it has a 30 foot easement and a cul-de-sac easement across the Stephenson Property and that

Stephenson has interfered with both of these easements." (Doc. 99, Conclusions of Law ¶ 5)

27. The District Court's Order states, in further part, "The items installed by Stephenson within Lone Peak's 30 foot easement and Lone Peak's cul-de-sac easement affect the ability of Lone Peak and others, including fire trucks, to safely and effectively access the Lone Peak Property. If the Court does not grant the requested injunctive relief, Lone Peak will suffer irreparable harm because it and others cannot safely and effectively access the Lone Peak Property." (Doc. 99, Conclusions of Law ¶ 24)

28. The District Court's Order states, in further part, "Lone Peak has established that the balance of equities tips in favor of Lone Peak…. Because Lone Peak has made a prima facie case of the validity of the 30 foot easement and the cul-de-sac easement and Stephenson's unreasonable interference with both of those easements, an injunction issued against Stephenson would do no more than require him to follow the law." (Doc. 99, Conclusions of Law ¶¶ 27, 29)

29. The District Court's Order states, in further part, "Lone Peak has established that an injunction protecting Lone Peak and the Lone Peak Property is in the public interest…. It is particularly important, from a public interest standpoint, to allow emergency services, such as fire trucks, safe and effective access to the Lone Peak property…. That Stephenson's actions are affecting the safe and effective

use of the fire truck turn radius heightens the public's interest in injunctive relief being issued by the Court." (Doc. 99, Conclusions of Law ¶¶ 30-31)

30. Stephenson filed a Notice of Appeal on July 16, 2024, appealing the District Court's Order. (*See* Supreme Court's Notice of Appeal, Doc. 102.).

SUMMARY OF THE ARGUMENT

The evidence before the District Court demonstrates that Lone Peak currently enjoys unobstructed use of the same Driveway it used prior to the onset of this litigation, and that Stephenson has never installed any improvements obstructing Lone Peak's use of this Driveway to access its residence. As such, Lone Peak's access at the time it moved the District Court for a preliminary injunction *is* the access it had under the *status quo ante litem*. As a District Court can properly grant a preliminary injunction only for the limited purpose of preserving the *status quo*, Lone Peak cannot lawfully gain by way of a preliminary injunction any additional access beyond the use of the Driveway it currently enjoys.

Despite this, Lone Peak sought an injunction to protect its rights to use two alleged easements burdening Stephenson's property. Although Lone Peak failed to establish any of the four elements required of a party seeking an injunction under Mont. Code Ann. §27-19-201, the District Court nonetheless granted the Injunction on the basis of the conclusions of law stated in the District Court Order. As such, the District Court's conclusions of law constitute clear and reversible error, as follows:

a. The District Court erred in concluding that Lone Peak established it is likely to win on the merits, because it overlooked clear evidence showing that Lone Peak's two alleged easements are invalid in reaching this conclusion.

b. The District Court likewise erred in concluding that Lone Peak established a likelihood of irreparable harm in the absence of preliminary relief, because the evidence before the District Court clearly demonstrates that Lone Peak has not suffered harm from a loss of access, and further demonstrates that any harm it may suffer due to a lack of adequate fire truck and emergency access is harm it was equally likely to suffer under the *status quo*, and cannot properly be addressed by a preliminary injunction.

c. The District Court erred once again in concluding that Lone Peak established that the balance of equities tips in its favor because the Court, in balancing the equities, failed to consider Stephenson's right to use his property and failed to appreciate that the Injunction is not necessary to ensure Lone Peak's access to its property.

d. Finally, the District Court erred in concluding that Lone Peak established that the Injunction is in the public interest because it again failed to appreciate that the Injunction is not necessary to ensure Lone Peak's access to its property, and further failed to appreciate that a preliminary injunction cannot lawfully provide Lone Peak any more access than the *status quo* access it already enjoys.

Finally, and independent of Lone Peak's failure to meet its evidentiary burden,

the District Court manifestly abused its discretion in granting the Injunction as requested by Lone Peak because that Injunction fails to preserve the *status quo*, and indeed requires Stephenson to upset the *status quo* by removing existing improvements from his property.

STANDARD OF REVIEW

The grant or denial of injunctive relief is "within the broad discretion of the district court based on applicable findings of fact and conclusions of law.". *Davis v. Westphal*, ¶ 10. Accordingly, a district court's order granting or denying a preliminary injunction is reviewed for a manifest abuse of discretion. *Id.*; *Planned Parenthood of Montana v. State*, 2024 MT 228, ¶ 10. An abuse of discretion occurs if a lower court exercises its discretion "based on a clearly erroneous finding of fact, erroneous conclusion or application of law, or otherwise arbitrarily, without conscientious judgment or in excess of the bounds of reason, resulting in substantial injustice." *Id.*; *Meine v. Hren Ranches, Inc.*, 2020 MT 284, ¶ 13, 402 Mont. 92, 101, 475 P.3d 748, 754. "A manifest abuse of discretion is one which obvious, evident, or unmistakable." *Planned Parenthood of Montana v. State*, ¶ 10; *Davis v. Westphal*, ¶ 10.

Additionally, where a District Court's decision to issue a preliminary injunction is based on findings of fact and conclusions of law, the standard of review of such findings of fact and conclusions of law is "whether the findings of fact are clearly erroneous and whether the conclusions of law are correct." *Davis v. Westphal*, ¶ 10; *Driscoll v. Stapleton*, 2020 MT 247, ¶12, 401 Mont. 405, 413, 473 P.3d 386, 391. Where a District Court's grant or denial of an injunction is based upon conclusions of law, "no discretion is involved," and the court's conclusions of

law are reviewed for correctness. *City of Whitefish v. Bd. of Cnty. Comm'rs of Flathead County ex rel. Brenneman*, 2008 MT 436, ¶ 7 347 Mont. 490, 493, 199 P.3d 201, 204.

ARGUMENT & AUTHORITIES

I. THE DISTRICT COURT ERRED IN CONCLUDING THAT LONE PEAK MET ITS EVIDENTIARY BURDEN AS SET FORTH IN §27-19-201(1).

Montana Code Annotated §27-19-201 provides that a preliminary injunction may be granted only when the party seeking the injunction establishes all of the following:

> (a) the applicant is likely to succeed on the merits;
> (b) the applicant is likely to suffer irreparable harm in the absence of preliminary relief;
> (c) the balance of equities tips in the applicant's favor; and
> (d) the order is in the public interest.

Mont. Code Ann. §27-19-201(1).

Following the recent amendment of this statute by the Montana legislature, this Court has affirmed that a party seeking an injunction is required to meet this four-part conjunctive test. *Planned Parenthood of Montana v. State*, 2024 MT 228, ¶ 12. Further, the Court affirmed in *Planned Parenthood of Montana v. State* that it is an abuse of discretion for a District Court to grant an injunction "based on a clearly erroneous finding of fact, erroneous conclusion or application of law, or otherwise arbitrarily." *Planned Parenthood of Montana v. State*, ¶ 13; and see *Meine v. Hren Ranches, Inc.*, 2020 MT 284, ¶ 13, 402 Mont. 92, 101, 475 P.3d 748, 754.

Here, the evidence presented to the District Court does not support the finding that Lone Peak established these four required elements. Indeed, the evidence presented is not sufficient to establish any one of the required elements.

Consequently, the District Court erred in granting the Injunction. Lone Peak's failures to establish each of the four elements will be discussed in turn below.

a. THE DISTRICT COURT ERRED IN CONCLUDING THAT LONE PEAK IS LIKELY TO SUCCEED ON THE MERITS BECAUSE THE COURT OVERLOOKED EVIDENCE THAT BOTH OF LONE PEAK'S ALLEGED EASEMENTS ARE INVALID.

The first element of the four-part test established by Montana's recently-amended preliminary injunction statute requires a party seeking an injunction to establish that "the applicant is likely to succeed on the merits." Mont. Code Ann. §27-19-201(1). In its Order, the District Court concluded that Lone Peak established this on the basis of its allegations that it enjoys "a 30 foot wide access easement located on the Stephenson Property, as set forth in the Smith-Lone Peak Warranty Deed," and further enjoys "an access easement as depicted on COS 1754 and COS 1754A, including the cul-de-sac depicted thereon." (Doc. 62, p. 7; and see Exhibit A, 19:18-23).

Neither of the easements alleged by Lone Peak is valid, however. The 30 foot easement alleged by Lone Peak (the "Alleged 30 Foot Easement) is invalid because it was not recorded in the chain of title for Stephenson's property when Stephenson acquired the property. Meanwhile, the cul-de-sac easement alleged by Lone Peak (the "Alleged Cul-de-sac Easement) is invalid because the easement depicted on COS 1754 and COS 1754A is a road easement benefitting the members of Skywood

Preserve Owners' Association, Inc. *as* members of said association, and *not* an access easement benefitting Lone Peak's property specifically.

As Stephenson has explained in prior briefing, the Alleged 30 Foot Easement was not recorded in the chain of title for Stephenson's property at the time Stephenson acquired it. (*See* Doc. 47, pp. 8-10; Doc. 67, pp. 8-9) Stephenson took title to the property in 2010. At that time, Montana law adhered to a "narrow chain-of-title" doctrine, whereby an easement burdening a parcel which was granted by a former owner of that parcel is not enforceable against subsequent owners of that parcel unless it is recorded in the servient parcel's chain of title. See *Nelson v. Barlow* 2008 MT 68, ¶ 16, 342 Mont. 93, 98, 179 P.3d 529, 533, *overruled by Earl v. Pavex Corp.*, 2013 MT 343, ¶ 16, 372 Mont. 476, 313 P.3d 154. Here, the Alleged 30 Foot Easement was granted to Lone Peak by the former owner of Stephenson's property, Phillip H. Smith; however, the Easement was never recorded in the chain of title for Stephenson's property—the servient parcel. Consequently, under the narrow chain-of-title doctrine Stephenson did not have constructive notice of the Alleged 30 Foot Easement when he purchased his property in 2010, and the Easement is not enforceable against him. Although the Montana Supreme Court overturned *Nelson v. Barlow* on this point and adopted a "wide chain-of-title" doctrine in 2013, this subsequent change does not affect whether the Alleged 30 Foot

Easement is enforceable against Stephenson's property. See *Earl v. Pavex Corp.*, 2013 MT 343, ¶ 16, 372 Mont. 476, 313 P.3d 154.

As Stephenson has also explained in prior briefing, the Alleged Cul-de-sac Easement is a misdescription of a road easement depicted on COS 1754A and conveyed to the members of Skywood Preserve Owners Association, Inc. by an Affidavit of Dedication recorded in 1993. (*See* Doc. 47, p. 8; Doc. 67, pp. 9-10). Lone Peak contends that the Alleged Cul-de-sac Easement is an access easement conveyed as an easement-by-reference for the benefit of Lone Peak's property. Under Montana's easement-by-reference doctrine, an express easement may be created by a reference in an instrument of conveyance to a recorded plat or certificate of survey on which the easement "is clearly depicted and adequately described" *Yorlum Properties Ltd. v. Lincoln County*, 2013 MT 298, ¶ 16, 372 Mont. 159, 166, 311 P.3d 748, 754-55; *Blazer v. Wall*, 2008 MT 145 ¶ 41, 343 Mont. 173, 190, 183 P.3d 84, 97-98. Further, this Court has consistently held that such an easement is "adequately described" if the referenced plat or certificate of survey clearly indicates the dominant tenement, the servient tenement, and the use or necessity of the easement. See *Yorlum*, ¶ 25; *Blazer*, ¶ 51. Here, neither COS 1754 nor COS 1754A provides <u>any information</u> suggesting that Lone Peak's property should be understood as the dominant tenement of the easement depicted thereon or that that easement is to be used as a private access easement. Rather, the explicit language of both

certificates of survey clearly indicates that the easement they depict is a 60-foot-wide road easement benefitting Skywood Preserve Owners' Association, Inc., to whose protective covenants the certificates refer "for road status and creation of ingress/egress rights." (Doc. 62, Exhibits 1 & 3)

The evidence reviewed above demonstrates that Lone Peak's alleged easements are invalid. Unfortunately, the District Court's Order does not address any of this evidence. Moreover, at the evidentiary hearing addressing the Injunction the District Court instructed the parties to avoid giving evidence addressing the validity of the easements at issue. (See Exhibit A, 13:18-25; 15:11-25; 16:1-10; 23-25; 17:1-4) Asked by counsel to clarify the scope of the hearing, the Court stated that the parties did not need to address the foundation of each party's respective claims regarding the validity of the easements, and affirmed that the Court was "assuming that the 30 foot easement and the cul-de-sac easement does exist [*sic*]" (Exhibit A, 15:14-20; 16:23-25; 17:1-11) Accordingly, Lone Peak provided no evidence at the Hearing to address Stephenson's contentions that the two alleged easements are invalid.

In sum, both Lone Peak's briefing and the evidence presented at the Hearing addressing the Injunction failed to establish that Lone Peak is likely to succeed on the merits. Lone Peak having failed to meet this element of the four-part test set forth

in Mont. Code Ann. §27-19-201, the District Court's grant of the Injunction constitutes clear error.

b. THE DISTRICT COURT ERRED IN CONCLUDING THAT LONE PEAK IS LIKELY TO SUFFER IRREPARABLE HARM IN THE ABSENCE OF PRELIMINARY RELIEF BECAUSE THE EVIDENCE DEMONSTRATES THAT ANY HARM LONE PEAK IS LIKELY TO SUFFER IS HARM IT WOULD SUFFER UNDER THE *STATUS QUO* PRIOR TO LITIGATION.

As noted above, Montana's recently-amended preliminary injunction statute provides, in part, that a party seeking an injunction must show "the applicant is likely to suffer irreparable harm in the absence of preliminary relief." Mont. Code Ann. §27-19-201(1). In its Order, the District Court concluded that Lone Peak met this element of the amended statute's four-part test, stating:

> The items installed by Stephenson within Lone Peak's 30 foot easement and Lone Peak's cul-de-sac easement affect the ability of Lone Peak and others, including fire trucks, to safely and effectively access the Lone Peak Property. If the Court does not grant the requested injunctive relief, Lone Peak will suffer irreparable harm because it and others cannot safely and effectively access the Lone Peak Property.

(Doc. 99, Conclusions of Law ¶ 24)

The Court's conclusion here is not supported by the evidence, however, nor is it consistent with Montana law regarding the limited purpose of a preliminary injunction.

First, the evidence: The District Court concluded that items installed by Stephenson have affected Lone Peak's ability to access its property. To the contrary, Lone Peak testified through its member Eric Schertel that it continues to use the

same Driveway it used before this litigation began, and that Stephenson has never installed any improvements blocking or obstructing this Driveway (*See* Exhibit A, 44:9-14; 45:5-16; 46:6-11; 47:1-4, 9-10, 13-16) Lone Peak further testified that the sole item Stephenson has installed on the Driveway—a three-inch-high speed bump—has never prevented Lone Peak from accessing its property. (*See* Exhibit A, 47:17-19) As such, Lone Peak's own testimony does not support the District Court's conclusion that the items Stephenson has installed on his property have affected Lone Peak's ability to access its property and will cause irreparable harm to Lone Peak. Instead, Lone Peak's testimony demonstrates that Lone Peak continues to enjoy the same access it enjoyed under the *status quo* prior to litigation, and that Stephenson has never installed items that would expose Lone Peak to irreparable harm by interfere with that access.

This lack of evidence is also apparent in the District Court's findings of fact. There, the District Court finds that Stephenson has placed items in Lone Peak's two alleged easements which prevent Lone Peak from using the full area of the two easements, but does *not* find that any of these items prevent Lone Peak from using its existing Driveway. (Doc. 99, Findings of Fact ¶¶ 20-21) Moreover, the District Court finds that "[n]either an ambulance nor fire truck could access the Lone Peak Property in the winter due to the clearance issues" created by the speed bump Stephenson installed. (Doc. 99, Findings of Fact ¶ 26) But no evidence or testimony

in the record supports this finding; consequently, the District Court's reliance on it to conclude that Lone Peak is likely to suffer irreparable harm is improper.

Lack of evidence aside, the District Court erred in concluding that Lone Peak will suffer irreparable harm in the absence of injunctive relief because it failed to appreciate that such relief must preserve the *status quo* prior to litigation. This Court has long held that the "limited purpose" of a preliminary injunction is "to preserve the status quo and minimize the harm to all parties" *Davis v. Westphal*, 2017 MT 276, ¶ 24; *Porter v. K & S Partnership*, 192 Mont. 175, 183, 627 P.2d 836, 840 (1981). Consistent with this, the Court recently affirmed that under Montana's amended statute "it remains the case" that a preliminary injunction is to "preserve the status quo and the rights of the parties until a final judgment issues in the cause." *Planned Parenthood of Montana v. State by & through Knudsen*, 2024 MT 227, ¶ 16 (quoting *City & Cnty of S.F v. U.S. Citizenship & Immigr. Servs.*, 944 F. 3d 773, 789 (9th Cir. 2019).

Here, the *status quo* was established by Lone Peak's use of the Driveway traversing across Stephenson's property. (*See* Exhibit A, 44:9-14; 45:5-16) Indeed, in prior briefing Lone Peak has insisted upon this point, representing to the District Court that after Stephenson's lawsuit was filed "Lone Peak continued to use the existing [Driveway] access to the Lone Peak Property in order to maintain the status quo." (Doc. 51, p. 5) Consequently, any injunction granted by the District Court

could properly do no more than preserve Lone Peak's use of its existing Driveway. By the same token, the District Court could properly grant an injunction to protect Lone Peak from harm only if Lone Peak was not exposed to that harm under the *status quo*. Despite this, the District Court's Order grants an injunction permitting Lone Peak to use areas outside the bounds of the driveway. (Doc. 99, Conclusions of Law ¶¶ 9, 16, p. 15) Further, the Order grants this injunction on the basis of the District Court's conclusion that Lone Peak will suffer irreparable harm due to an inability to use the full area of both alleged easements. (Doc. 99, Conclusions of Law ¶¶ 23-24). In doing so, the District Court's Order grants an injunction that fails to preserve the *status quo*, because Lone Peak failed to establish any likely harm that an injunction preserving the *status quo* could protect it from. Instead, Lone Peak alleged harms that it was equally exposed to under the *status quo* and invited the District Court to upend the *status quo* to address those alleged harms. The District Court accepted Lone Peak's invitation, granting the Injunction despite Lone Peak's failure to establish any likely harm that a preliminary injunction could properly address. The District Court's grant of the Injunction therefore constitutes clear error.

c. THE DISTRICT COURT ERRED IN CONCLUDING THAT THE BALANCE OF EQUITIES TIPS IN LONE PEAK'S FAVOR BECAUSE THE INJUNCTION IMPINGES STEPHENSON'S RIGHT TO USE AND ENJOY HIS PROPERTY, WHILE LONE PEAK MAY ENJOY ITS RIGHT TO ACCESS ITS PROPERTY WITHOUT THE INJUNCTION.

The third element that a party seeking an injunction must establish under Montana's preliminary injunction statute is that "the balance of equities tips in the applicant's favor." Mont. Code Ann. §27-19-201(1). The District Court's Order concludes that Lone Peak has met this requirement, reasoning that light of Lone Peak's *prima facie* case that Stephenson is interfering with Lone Peak's valid easements, "an injunction issued against Stephenson would do nothing more than require him to follow the law." (Doc. 99, Conclusions of Law ¶ 29) Lone Peak makes this exact claim in its briefing in support of its request for the Injunction. (*See* Doc. 62, p. 15) Whether alleged by Lone Peak or stated as a conclusion by the District Court, however, the claim is clearly and demonstrably false.

As discussed above, Lone Peak fails to establish that it is likely to succeed on the merits, so the District Court's reasoning falls apart. Leaving this aside, however, and assuming for the sake of argument that the alleged easements are valid, this Court's prior easement jurisprudence nevertheless provides that the owner of a servient tenement "may make use of the land [subject to an easement] in any lawful manner that he or she chooses, provided that such use is not inconsistent with and does not interfere with the use and right reserved to the dominant tenement or estate." *Musselshell Ranch Co. v. Seidel-Joukova*, 2011 MT 217, ¶ 18, 362 Mont. 1, 8, 261 P.3d 570, 575; and see *Mason v. Garrison*, 2000 MT 78, ¶ 47, 299 Mont. 142, 156, 998 P.2d 531, 540. Here, Lone Peak's requested injunction made no allowance for

Stephenson's lawful use of his property, prohibiting him from placing improvements (and further requiring him to remove existing improvements) of any kind, anywhere on the two alleged easements. As such, the Injunction does not discriminate between lawful and unlawful uses of Stephenson's property, nor between reasonable and unreasonable improvements. Rather, it constitutes a blanket prohibition against Stephenson using his own property, contrary to Montana law.

Under Montana law, the "balancing of rights" between an easement-holder and a servient landowner "incorporates a standard of reasonableness." *Musselshell Ranch Co. v. Seidel-Joukova*, ¶19. The District Court's grant of the Injunction constitutes clear error because the Injunction makes no attempt to balance Stephenson's rights against Lone Peak's. And the Court's error here is only exacerbated by the fact that Lone Peak continues to enjoy the same unobstructed use of its Driveway it enjoyed prior to the onset of this litigation, demonstrating that the Injunction burdening Stephenson's rights here is not even necessary to protect Lone Peak's right of access—the purpose for which it was ostensibly granted.

d. THE DISTRICT COURT ERRED IN CONCLUDING THAT THE PRELIMINARY INJUNCTION IS IN THE PUBLIC INTEREST BECAUSE THE INJUNCTION IS NOT NECESSARY TO PROTECT LONE PEAK'S CURRENT ACCESS TO ITS PROPERTY, AND CANNOT PROPERLY GRANT LONE PEAK MORE THAN THAT.

Under the amended preliminary injunction statute, a party seeking an injunction must, finally, establish that the requested injunction "is in the public

interest." Mont. Code Ann. §27-19-201(1). Here, the District Court concluded that Lone Peak established this, stating, "[i]t is in the public interest to ensure property owners and residents can access their property and residences," and further noting "[i]t is particularly important, from a public interest standpoint, to allow emergency services, such as fire trucks, safe and effective access." (Doc. 99, Conclusions of Law ¶ 31). As the discussion above has shown, the evidence before the District Court and the relevant law regarding the limited purpose of a preliminary injunction do not support either of the District Court's conclusions here.

The District Court concludes, first, that granting the Injunction serves the public interest of ensuring that property owners can access their property. But Lone Peak's own testimony establishes that the Injunction is not necessary to ensure its access to its property, because Lone Peak continues to enjoy unobstructed use of the same Driveway it used under the *status quo* prior to litigation—and Stephenson has never installed any improvements which have prevented Lone Peak from accessing its property and residence via the Driveway. (*See* Exhibit A, 44:9-14; 45:5-16; 46:6-11; 47:1-4, 9-10, 13-19.)

Second, the District Court concludes that the Injunction serves the "particularly important" public interest of ensuring that fire trucks and other emergency services have safe and effective access to private properties and residences. This is no doubt an important public interest, but it is an interest the

District Court cannot issue a preliminary injunction to protect in this case, because fire trucks and other emergency vehicles did not have the access Lone Peak claims they require under the *status quo*. Having proceeded for years without ensuring adequate fire truck and emergency access to its property and residence, Lone Peak cannot now demand that the District Court disrupt the *status quo* in order to secure such adequate access at Stephenson's expense. Moreover, the Injunction bars Stephenson from making use of his property in ways that do not interfere with Lone Peak's access despite this Court's repeated finding that a servient landowner has the right to use his property "in any lawful manner…[that] does not interfere with" the dominant landowner's use of an easement. *Musselshell Ranch Co. v. Seidel-Joukova*, ¶ 18. The use of a preliminary injunction to unlawfully deprive a property owner of his rights cannot be in the public interest.

The District Court's Order identifies two ways in which the Injunction purportedly serves the public interest. Upon closer examination, however, the evidence before the District Court does not support the conclusion that the Injunction is necessary to ensure Lone Peak's access to its property and residence. Likewise, the evidence before the Court and this Court's relevant precedents show that the Injunction is not a lawful way to ensure adequate fire truck and emergency access to Lone Peak's property. As the District Court's conclusion that the Injunction is in the

public interest is not supported by the facts before the Court or Montana law, The District Court's conclusion constitutes clear error.

II. THE DISTRICT COURT MANIFESTLY ABUSED ITS DISCRETION IN GRANTING THE INJUNCTION BECAUSE THE INJUNCTION DOES NOT PRESERVE THE *STATUS QUO*.

Lone Peak's evidentiary burden aside, the District Court manifestly abused its discretion in granting the Injunction. Under clear Montana law, a District Court considering whether to issue a preliminary injunction must exercise its discretion "only in furtherance of the limited purpose of preliminary injunctions to preserve the status quo." *Davis v. Westphal*, ¶ 24; *Planned Parenthood v. State by & through Knudsen*, ¶¶ 8, 16. And where a requested injunction will not preserve the status quo, the injunction should not issue. *Knudson v. McDunn*, 271 Mont. 61, 894 P.2d 295 (1995); *Davis v. Westphal*, ¶ 24. Consequently, issuance of a preliminary injunction that does not preserve the *status quo* necessarily constitutes an abuse of discretion. And where a District Court issues an injunction that obviously, evidently, or unmistakably fails to preserve the *status quo*, its abuse of discretion is manifest. See *Driscoll v. Stapleton*, ¶ 12; *Planned Parenthood of Montana*, ¶ 10.

Here, it is undisputed that the *status quo* prior to litigation was established in 2020 by Lone Peak's use of the Driveway to access its property, *and not* its use of the two easements alleged in its Counterclaim. (Doc. 1, ¶ 22; Doc. 3, ¶ 22; Doc. 51, pp. 4-5; Exhibit A, 44:9-14; 45:5-16). Despite this, Lone Peak did not seek an

injunction protecting its right to use the Driveway but rather asked the District Court to enjoin Stephenson from installing improvements anywhere on its two alleged easements. Moreover, Lone Peak did not seek only to enjoin Stephenson from placing new improvements on the two alleged easements, but rather also asked the Court to order Stephenson to remove existing improvements from the two alleged easements. And this is the injunction the District Court granted.

In granting the Injunction, therefore, the District Court enjoined Stephenson's use of an area of his property that extends well beyond the area used by Lone Peak under the *status quo*, Lone Peak's use of which has never been uncontested by Stephenson. Further, the District Court ordered Stephenson to remove existing improvements from the two alleged easements, actively upsetting the *status quo* and imposing costs on Stephenson. Given the scope of the injunction compared to Lone Peak's use of Stephenson's property under the *status quo* prior to litigation, it is evident and unmistakable that the Injunction fails to preserve the *status quo*. It is likewise evident and unmistakable that the District Court's exercise of its discretion in granting the Injunction failed to further the limited purpose of preserving the *status quo*. The District Court therefore manifestly abused its discretion in granting the Injunction, and reversal of the District Court's Order granting the Injunction is appropriate.

CONCLUSION

The District Court's grant of the Injunction should be reversed because Lone Peak failed to meet the evidentiary burden required to establish that a preliminary injunction may be granted. Separately and independently, the grant of the Injunction should be reversed because the Injunction fails to further the limited purpose of preserving the *status quo*, and does so obviously, evidently, and unmistakeably. The District Court's grant of the Injunction therefore constitutes a manifest abuse of discretion. For both of these reasons, this Court should rule in favor of Stephenson, reverse the District Court's Order granting the Injunction, and remand this case to the District Court for further proceedings consistent with that result.

Dated: October 29, 2024 Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4)(e) of the Montana Rules of Appellate Procedure, I certify that this 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 10,000 words, excluding certificate of service and certificate of compliance.

Dated this 29th day of October, 2024.

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CERTIFICATE OF SERVICE

I, Michael Lloyd Rabb, hereby certify that I have served true and accurate copies of the foregoing Appellant's Opening Brief to the following on October 31, 2024.

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