

IN THE SUPREME COURT OF THE STATE OF MONTANA

Cause No. DA 24-0422

STEVEN CORRY STEPHENSON, AS TRUSTEE OF
THE STEVEN CORRY STEPHENSON TRUST, AMENDED AND
REINSTATED SEPTEMBER 20, 2000;

Appellant,

v.

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

Appellee.

APPELLEE LONE PEAK PRESERVE LLC'S RESPONSE BRIEF

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

Attorneys for Plaintiff/Appellant

Michael Rabb
The Rabb Law Firm, PLLC
3950 Valley Commons Drive, Suite 1
Bozeman, MT 59718
Telephone: (406) 404-1747
mrabb@therabblawfirm.com

Attorneys for Defendant/Appellee

Kelsey Bunkers
E. Lars Phillips
Elizabeth L. Orvis
Crowley Fleck, PLLP
P.O. Box 10969
Bozeman, MT 59719-0969
Telephone: (406) 556-1430
kbunkers@crowleyfleck.com
lphillips@crowleyfleck.com
eorvis@crowleyfleck.com

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STATEMENT OF THE ISSUES

This is an appeal from a preliminary injunction entered by the District Court on July 11, 2024. As a result, the question before this Court is narrow and the ultimate merits of the underlying claims are not at issue. *Planned Parenthood of Mont. v. State*, 2022 MT 157, ¶ 20, 409 Mont. 378, 515 P.3d 301. The limited question before this Court is as follows:

Did the District Court manifestly abuse its discretion in granting preliminary injunctive relief?

STATEMENT OF THE CASE

Appellant Steven Corry Stephenson, as trustee of the Steven Corry Stephenson Trust, amended and reinstated September 20, 2000 (“Stephenson”) and Appellee Lone Peak Preserve LLC (“Lone Peak”) own neighboring parcels of real property in Gallatin County, Montana. (Doc. 99, *Findings of Fact, Conclusions of Law, and Order for Preliminary Injunction* at 2 (hereinafter “Order”). Stephenson sued Lone Peak on December 2, 2021, asserting a claim for trespass and a request for declaratory relief. (Doc. 1 at 4-6). On June 7, 2022, Lone Peak counterclaimed against Stephenson for interference with easement and trespass, requesting declaratory relief and injunctive relief. (Doc. 12).

After Lone Peak filed its counterclaims, Stephenson installed a speed bump and large, landscaping boulders within Lone Peak’s easements. As a result, Lone

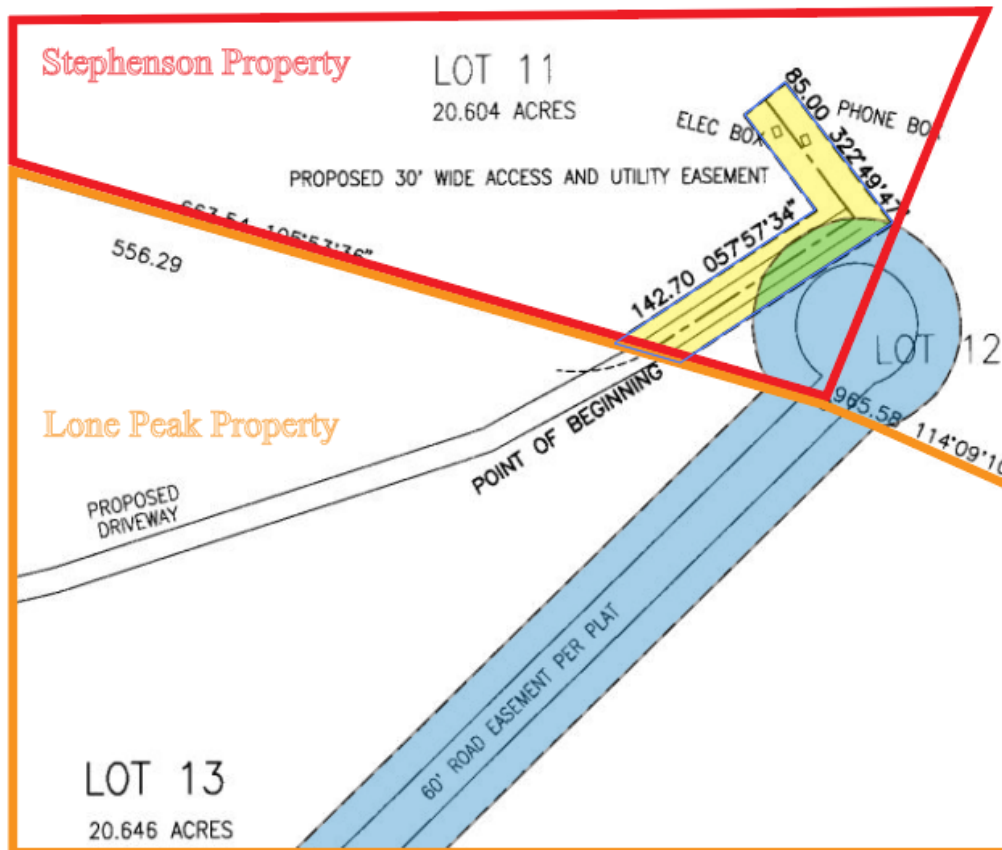
Peak sought a preliminary injunction. The District Court entered a temporary restraining order and an order to show cause on September 11, 2023. (Doc. 70). The District Court held a show cause hearing on October 10, 2023 (the “Hearing”). Subsequently, the District Court issued a preliminary injunction against Stephenson on July 11, 2024, noting that it had considered a broad swath of evidence, including the testimony of witnesses, the parties’ briefs, and affidavits the parties submitted. (Order at 1-2).

In its Order, the District Court enjoined Stephenson “from installing any improvements or structures within Lone Peak’s 30 foot easement and cul-de-sac easement, as those easements are defined [within the Order], 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.” *Id.* at 15. The District Court also ordered Stephenson to “remove all improvements, structures or obstacles placed within Lone Peak’s 30 foot easement and cul-de-sac easement, as those easements are defined [within the Order], and to remove any other interferences or impediments to Lone Peak’s 30 foot easement and cul-de-sac easement.” *Id.*

Stephenson appealed on July 16, 2024.

STATEMENT OF FACTS

This appeal arises from a dispute over two record easements that provide access to Lone Peak’s property: the 30-Foot Easement and the Cul-de-sac Easement. The following figure approximately depicts the parties’ properties and the easements at issue. The Stephenson Property is outlined in red; the Lone Peak Property is outlined in orange; the 30-Foot Easement is depicted in yellow; the Cul-de-sac Easement is depicted in blue; and the area in which the 30-Foot Easement and the Cul-de-sac Easement overlap is depicted in green):



See Exhibit A to the Smith-Lone Peak Deed, as defined below (Appellee’s Supplemental Appendix 42 (hereinafter “Supp.App.”)).

Relatedly, COS 1754 states that “[r]oads shown are existing or layed out at this time. See protective covenants for road status and creation of ingress/egress rights.” Supp.App. 31.

In an Affidavit of Dedication recorded May 24, 1993, as Doc. 264854, Phillip H. Smith and others, as owners of the Lots in COS 1754, stated, 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 and the 30’ access easement in Section 1, Township 7 South, Range 4 East and the 30’ access easement in Section 31, Township 7 South, Range 4 East, and utilities easement for power, phone and cable to be located on the uphill side of the 60’ and 30’ accesses are hereby granted as easements 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.

Supp.App. 5-6, Hr’g Ex. 3. The Affidavit of Dedication created an easement benefiting Lots 11 and 13, and others, over the platted roads shown on COS 1754 (referred to as the “Cul-de-sac Easement”). Supp.App. 5.

Smith et al. recorded an amended survey, Certificate of Survey No. 1754A on April 19, 1994, as Doc. 284745 (“COS 1754A”). Supp.App. 32. COS 1754A clarifies that its purpose was to “relocate the 60’ road easement to reflect the position of the road as it was constructed in 1993. *Id.* A comparison of COS 1754 and COS 1754A demonstrates that the amendment did not alter the location of the Cul-de-sac Easement. Instead, COS 1754A amended the location of the described easement over Lots 23 and 24, which are not at issue in this case.

B. The Cul-de-sac Easement

Through COS 1754, COS 1754A, and the Affidavit of Dedication, Smith and others created the Cul-de-sac Easement. The portion of the Cul-de-Sac Easement at issue in this case is outlined in blue below.



When testifying at the Hearing, Stephenson admitted that COS 1754 showed a cul-de-sac on the Stephenson Property. Appellant’s Appendix, Ex. B., Hr’g Tr. 87:14-88:25 (hereinafter “Hr’g Tr.”); *see also* Supp.App. 31 (depicting Stephenson’s mark circling the cul-de-sac on COS 1754).

C. The Lone Peak Property and the 30-Foot Easement

In January 2005, Smith owned both Lot 11 and Lot 13. He conveyed Lot 13 to Lone Peak by reference to COS 1754A pursuant to a warranty deed recorded on January 18, 2005, as Doc. 2176107 (the “Smith-Lone Peak Deed”). Supp.App. 40-

42. The Smith-Lone Peak Deed particularly describes the conveyed parcel, which is commonly known as 2190 Skywood Road, Big Sky, Montana 59716, as follows:

Lot 13 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 in the office of the County Clerk and Recorder of Gallatin County, Montana.

(the “Lone Peak Property”). Supp.App. 40.

In that same deed, Smith also conveyed to Lone Peak an express easement over his retained property, Lot 11, for the benefit of the conveyed property, Lot 13, with the following language:

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 part of this document.

Id. The deed exhibit to the Smith-Lone Peak Deed depicts the easement that Smith created and conveyed to Lone Peak, hereafter referred to as “30-Foot Easement.”

Supp.App. 42. The 30-Foot Easement leaves from the Cul-de-sac Easement and crosses Lot 11 for a short distance before connecting with the Lone Peak Property.

Id.

Stephenson admitted the existence of the 30-Foot Easement, testifying that “Lone Peak has a 30-foot wide access easement, as described [Exhibit A to the Smith-Lone Peak Deed]” and that Lone Peak also has an “access easement” to

allow “access to [the 30-Foot wide] easement and [Stephenson’s driveway].” Hr’g Tr. 84:10-19.

D. The Stephenson Property

Smith retained ownership of Lot 11 for roughly four and a half years after he conveyed Lot 13 to Lone Peak. By warranty deed recorded on August 11, 2010, as Doc. 2367485 (the “Smith-Stephenson Deed”), Smith conveyed to Stephenson the property commonly described as 2200 Skywood Road, Big Sky, Montana 59716, and particularly described as:

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 in the office of the County Clerk and Recorder of Gallatin County, Montana.

(the “Stephenson Property”). Supp.App. 43. The Smith-Stephenson Deed states that Stephenson took title subject to:

“reservations and restrictions in federal patents and prior conveyances, mineral reservations, all real property taxes and assessments for the current year and subsequent years, and 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.

E. Stephenson’s 2013 acknowledgement of the easements at issue.

Stephenson had knowledge of the 30-Foot Easement and the Cul-de-sac Easement for years before this dispute, as evidence by an instrument he recorded in Gallatin County. On February 27, 2013, Stephenson recorded the Access and

Utility Easement Agreement as Document No. 2441797 (the “2013 Agreement”).
Supp.App. 1-4. Therein, Stephenson stated that the purpose of the 2013 Agreement was “to provide the owner of [the Lone Peak Property] an additional access easement area.” Supp.App. 1. (emphasis added). Attached to the 2013 Agreement as Exhibit A was a survey exhibit created by C & H Engineering that identifies the 30-Foot Easement² and the portion of the Cul-de-sac Easement burdens Lot 13.³
Supp.App. 4.

II. Stephenson’s Interference with Lone Peak’s Easements

Lone Peak began constructing a residence on the Lone Peak Property in the fall of 2020. Op. Br. at 13. According to Stephenson, after construction began and for months before he filed suit, “Lone Peak and its agents made continuous use of Stephenson’s property, including driving over and across the property, parking vehicles on the property, placing materials and equipment on the property, and staging construction activities on the property.” (Doc. 67, *Stephenson’s Response in Opposition to Lone Peak’s Motion for Restraining Order and Preliminary Injunction* at 6).

Stephenson admits that, in the spring of 2022, after he had sued Lone Peak, he placed “landscape boulders and a log near the outlet of Lone Peak’s current

² Referred to thereon as the “30’ Wide Access & Utility Easement across Lot 11 for use of Lot 13 per Doc. No. 2176107.”

³ Referred to thereon as the “60’ Road Easement Per COS 1754A.”

access to its property,” but that he removed those landscape boulders and that log in the fall of 2022. Supp.App. 35, *Declaration of Steven Corry Stephenson* at ¶¶ 19, 22.

In the fall of 2022, shortly after Lone Peak had filed its counterclaims, Stephenson installed “a speed bump . . . across Lone Peak’s current access” and within the Cul-de-sac Easement. Hr’g Tr. 91:3-24, 96:5-14; Supp.App. 35, *Declaration of Steven Corry Stephenson* at ¶ 23. The following picture depicts the state of Lone Peak’s current access as of October 2022, including the landscape boulders, landscape materials, and speed bump installed by Stephenson:



Supp.App. 44. And, roughly one year later, in August 2023, Stephenson again placed landscape boulders and other materials near the outlet of Lone Peak’s current access to its property, Supp.App. 36, *Declaration of Steven Corry*

Stephenson at ¶¶ 27, 30.⁴ Stephenson admitted to placing the landscaping boulders within the exterior boundaries of the 30-Foot Easement to “mark the edge of [Eric Schertel’s] dirt path.” Hr’g Tr. 99:14-24.

In summary, within a year of Lone Peak seeking to enforce its easement rights through counterclaims, Stephenson placed landscape materials, landscape boulders, and a speed bump across Lone Peak’s “current access” to the Lone Peak Property. Hr’g Tr. 69:9-70:21 (Stephenson’s expert witness Michael S. Lapp admitting that both the speed bump and the landscaping boulders were located within what he called the ‘circular figure’ depicted on COS 1754 and COS 1754A.).

III. Preliminary Injunction Proceedings

To address the interferences installed by Stephenson, Lone Peak moved for injunctive relief on July 18, 2023. (Docs. 61-62). In support, Lone Peak provided the District Court with COS 1754, the Affidavit of Dedication, COS 1754A, the Smith-Lone Peak Deed, the Smith-Stephenson Deed, the Affidavit of Eric Schertel, various photos depicting Stephenson’s interference with the 30-Foot Easement and the Cul-de-sac Easement, a copy of the notice Lone Peak had provided to

⁴ Around this same time, Stephenson admits that a contractor he had hired blocked Lone Peak’s access by parking his vehicle within the area of Lone Peak’s easements. *See* Supp.App. 36, *Declaration of Steven Corry Stephenson* at ¶¶ 32–34.

Stephenson regarding his interference with Lone Peak's access rights on May 26, 2023, a copy of the 2013 Agreement confirming the 30-Foot Easement and the Cul-de-sac Easement, and the Affidavit of Jake Ziska.

Stephenson filed multiple responses opposing Lone Peak's request for injunctive relief. He filed his first response on July 24, 2023, (Doc. 63), a second response on August 11, 2023, (Doc. 67), and a third response on September 28, 2023, (Doc. 74).

The District Court granted a temporary restraining order on September 11, 2023, (Doc. 70), and held a hearing on the preliminary injunction on October 10, 2023, (the "Hearing"). In addition to the evidence submitted in briefing, Lone Peak submitted substantial evidence of Stephenson's interference with the 30-Foot Easement and the Cul-de-sac Easement to the District Court at the Hearing.

Eric Schertel, Lone Peak's principal, testified that the Cul-de-sac Easement connected to the 30-Foot Easement and that the cul-de-sac's bulb shape was necessary to "allow fire trucks, emergency vehicles, and other guests and such to access our property at any time of the year." Hr'g Tr. 21:9-18. Mr. Schertel also testified that the landscaping boulders and other landscaping materials installed by Stephenson would interfere with a "fire truck's turn radius within the cul-de-sac easement." Hr'g Tr. 22:15-24, 27:17-28:1. On that point, the District Court

admitted into evidence a letter from Deputy Fire Chief Tetrault of the Big Sky Fire Department (“BSFD”).⁵ Supp.App. 39.

The District Court admitted affidavit testimony from Osmane Harris, who works as a cleaner and housekeeper for Lone Peak. Supp.App. 12-14, *Affidavit of Osmane Harris* at ¶ 3. Ms. Harris testified that the speed bump installed by Stephenson prevented her from accessing the Lone Peak Property by vehicle twice during the winter of 2023. *Id.* at ¶ 6.

The District Court also admitted affidavit testimony from Leo McDonald, who works for Lone Peak. Supp.App. 7-11, *Affidavit of Leo McDonald* at ¶ 8. Mr. McDonald testified that Lone Peak hired him, in part, to ensure that Lone Peak’s easements and driveway are plowed in the winter. *Id.* at ¶ 5. Mr. McDonald testified that the speed bump installed by Stephenson “makes it more difficult to access the Lone Peak Property in the winter.” *Id.* at ¶ 7. He explained that the speed bump was plowed over in winter, but then someone—later learned to be Stephenson—would clear out the snow and create large, sometimes one-foot-deep ruts, on the sides of the speed bump. *Id.* Mr. McDonald testified that these ruts can

⁵ Stephenson objected to admission of the letter, but the District Court overruled Stephenson’s objection and Stephenson does not challenge the District Court’s evidentiary ruling on appeal. App. Ex. B, Hr’g Tr. 28:12-25.

sometimes make it impossible to access the Lone Peak Property without an off-road vehicle. *Id.*

Lone Peak's evidence in support of its request for injunctive relief was further supported by Stephenson's own testimony. At the hearing, Stephenson admitted that he had placed a speed bump across Lone Peak's current access to its property in the fall of 2022, and that the speed bump was still present as of July 2023. Hr'g Tr. at 96:5-23. Stephenson admitted to placing the landscaping boulders within the exterior boundaries of the 30-Foot Easement to "mark the edge of [Eric Schertel's] dirt path." Hr'g Tr. 99:14-24. Stephenson also admitted to installing the speed bump within the Cul-de-sac Easement. Hr'g Tr. 97:2-4.

IV. The Preliminary Injunction

The District Court entered its Findings of Fact, Conclusions of Law, and Order for Preliminary Injunction on July 11, 2024, and enjoined Stephenson "from installing any improvements or structures within [the 30-Foot Easement] and the [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." Order at 15. The District Court also ordered 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].” *Id.* Additional detail relating to the District Court’s Findings of Fact and Conclusions of Law is set forth below.

STANDARD OF REVIEW

This Court reviews a district court’s grant of a preliminary injunction for a manifest abuse of discretion. *Stensvad v. Newman Ayers Ranch, Inc.*, 2024 MT 246, ¶ 8, 418 Mont. 378, 557 P.3d 1240. A district court may abuse its discretion when it acts arbitrarily, without employment of conscientious judgment, or exceeds the bounds of reason resulting in substantial injustice. *Id.* (citing *Planned Parenthood of Mont.*, ¶ 5). To be “manifest,” an abuse of discretion must be obvious, evident, and unmistakable. *Id.* A district court’s factual findings are reviewed for clear error, and its legal conclusions are reviewed for correctness. *Id.* (citing *Davis v. Westphal*, 2017 MT 276, ¶ 10, 389 Mont. 251, 405 P.3d 73).

SUMMARY OF ARGUMENT

Without confronting his own admissions, and while ignoring key factual findings, Stephenson argues that the District Court abused its discretion in granting a preliminary injunction in favor of Lone Peak.

This appeal concerns interferences installed by Stephenson within two easements held by Lone Peak: the 30-Foot Easement and the Cul-de-sac Easement. Stephenson admits to installing those interferences after Lone Peak filed counterclaims in this lawsuit, and roughly a year after the dispute arose. In short,

Stephenson's own admissions demonstrate that the District Court's preliminary injunction preserves the status quo.

Attempting to short-circuit the District Court's analysis, Stephenson focuses on a narrow slice of Lone Peak's easements: what Stephenson calls the "Driveway." But what Stephenson defines as the "Driveway" is limited—his definition comprises only a small segment of the easements that Lone Peak uses to access its property—a fact that Stephenson admitted, when he testified to installing landscaping boulders within the 30-Foot Easement to limit Lone Peak's use to the "Driveway" and installing the speed bump within the Cul-de-sac Easement.

Stephenson's focus on what he defines as the "Driveway" confuses the issues before this Court: in short, he claims that because a small portion of Lone Peak's easement rights have not been interfered with—i.e., what he calls the Driveway—he has not interfered with Lone Peak's easement rights at all. Stephenson's own admissions prove the opposite is true and, no matter his sleight of defined terms, those admissions are insurmountable and were correctly acknowledged by the District Court.

The District Court thoroughly evaluated each of the required statutory factors necessary to support a preliminary injunction. The District Court considered a broad swath of evidence, much of which goes unchallenged by Stephenson on appeal, and correctly determined that Lone Peak was entitled to

injunctive relief. Stephenson falls well short of establishing a manifest abuse of discretion and this Court should affirm the District Court's decision.

ARGUMENT

I. STEPHENSON'S USE OF THE DEFINED TERM "DRIVEWAY" REQUIRES CLARIFICATION AND CONFUSES THE ISSUES BEFORE THIS COURT

On Lone Peak's motion for preliminary injunction, the District Court had to determine whether Lone Peak was likely to prove that its claimed easements—the 30-Foot Easement and the Cul-de-sac Easement—were valid and that Stephenson interfered with those easements. At the Hearing, Stephenson described three easements at issue: (1) "the one created by the Certificate of Survey, the potential cul-de-sac for Skywood," (2) the "easement that was created in 2013 by [Stephenson]," and, (3) the "easement created by the warranty deed for Eric Schertel." Hr'g Tr. 101:8-21. But now, on appeal, Stephenson argues that Lone Peak's easement rights are limited to the "Driveway," which he defines as the "gravel driveway" constructed by Lone Peak across the Stephenson Property. Op. Br. at 7.

The District Court found that Lone Peak was likely to establish the validity of the 30-Foot Easement and the Cul-de-sac Easement. Those easements are broader than the "Driveway," as Stephenson defines it. Stephenson has admitted as much. Stephenson testified that he placed the landscaping boulders within the

exterior boundaries of the 30-Foot Easement to “mark the edge of Schertel’s dirt path,” and placed the speed bump within the Cul-de-sac Easement, not within what he defines as the “Driveway.” Hr’g Tr. 99:14-24,

Stephenson’s attempt to use the term “Driveway” to confuse the issue before this Court permeates all aspects of his Opening Brief. First, Stephenson continually claims that he has never interfered with the “Driveway.” *E.g.*, Op. Br. at 8-9 (“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.”); Op. Br. at 13 (“Lone Peak continues to use the Driveway to access its homesite”). These statements ignore Stephenson’s admissions to the District Court. For example, Stephenson has admitted that the speed bump was installed within the Cul-de-sac Easement, not the “Driveway,” and that the landscaping boulders were installed to mark the edges of the “Driveway.” *See* Hr’g Tr. 97:2-4, 99:14-24.

Second, Stephenson argues that the status quo is Lone Peak’s use of the Driveway. *E.g.*, Op. Br. at 31. But that turns this dispute on its head. Lone Peak was forced to seek injunctive relief in the District Court because Stephenson’s interference prevented Lone Peak from using the full extent of the 30-Foot Easement and the Cul-de-sac Easement not because Stephenson had only interfered with the “Driveway.”

The “Driveway” that Stephenson refers to has little to do with the issue before this Court on appeal and should be disregarded. The “Driveway” is only a small segment of Lone Peak’s access to its property; it is not the entire 30-Foot Easement or the Cul-de-sac Easement. The issue here is the validity of those easements, and Stephenson’s interference with the same, and the District Court’s application of statutory preliminary injunction questions to those issues.

This Court should consider with caution Stephenson’s “Driveway” arguments as they fail to address the full scope of the issues before this Court simply because of how he has defined the term.

II. THE PRELIMINARY INJUNCTION ISSUED BY THE DISTRICT COURT PRESERVED THE STATUS QUO

Stephenson primarily argues the District Court abused its discretion by entering a preliminary injunction that did not preserve the status quo. Stephenson’s argument contradicts his own admissions and the record evidence. The preliminary injunction preserves the status quo by ordering removal of the obstructions Stephenson installed after Lone Peak’s counterclaims in this lawsuit.

A court has a duty to “minimize the injury or damage to all parties to [a] controversy.” *Benefis Healthcare v. Great Falls Clinic, LLP*, 2006 MT 254, ¶ 14, 334 Mont. 86, 146 P.3d 714 (citation omitted). The purpose of a preliminary injunction is to preserve the status quo. *Stensvad*, ¶ 29. As a result, a preliminary injunction is proper “to preserve the status quo and minimize the harm to all parties

pending final resolution on the merits.” *Driscoll v. Stapleton*, 2020 MT 247, ¶ 14, 401 Mont. 405, 473 P.3d 386 (quoting *Davis*, ¶ 24).

At the Hearing, Stephenson argued that “the status quo was prior to the lawsuit being filed.” Hr’g Tr. 113:6-12. Stephenson’s Complaint was filed in December 2021—months before, as he admits, any of the interferences were installed. To be clear, that should be enough to end the status quo analysis.

But now, on appeal, Stephenson contradicts his admissions to the District Court. By focusing on the so-called “Driveway,” Stephenson entirely ignores the full extent of the 30-Foot Easement and the Cul-de-sac Easement. By carefully arguing he has never installed any interferences “in” the “Driveway,” which he referred to below as “the dirt path,” Stephenson ignores that he has admitted to installing interferences within both the 30-Foot Easement and the Cul-de-sac Easement.

In short, Stephenson’s argument on appeal that the preliminary injunction did not preserve the status quo is wrong because Stephenson incorrectly presumes that Lone Peak only has the right to access “the dirt path” within the 30-Foot Easement, rather than the entire width of that 30-Foot Easement and completely disregards Lone Peak’s additional right to use the Cul-de-sac Easement.

Montana law is well settled on this point: an easement holder has the right to use the full extent of an easement. *Flynn v. Siren*, 219 Mont. 359, 362, 711 P.2d

1371, 1372 (Mont. 1986) (citations omitted). Stephenson refuses to acknowledge this principle by arguing that Lone Peak is limited to using the “Driveway,” as he defines it.

A. The Status Quo Here Is The Condition Of The 30-Foot Easement And The Cul-De-Sac Easement Before December 2, 2021.

The “status quo” in this case is the legally relevant relationship of the parties before the Complaint was filed, when Stephenson had not yet interfered with the 30-Foot Easement or the Cul-de-sac Easement.

This Court has defined the “status quo” as “the last actual, peaceable, noncontested condition which preceded the pending controversy.” *Flying T Ranch, LLC v. Catlin Ranch, LP*, 2022 MT 162, ¶ 28, 409 Mont. 478, 515 P.3d 806 (citations omitted).⁶ When addressing preliminary injunctions arising out of disputes over easement rights, this Court has consistently held that the “status quo” is the parties’ respective access rights immediately prior to the underlying dispute.

⁶ Federal courts also follow this analysis. The Ninth Circuit has held that, for preliminary injunction purposes, the status quo “refers not simply to any situation before the filing of a lawsuit, but instead to the last uncontested status which preceded the pending controversy.” *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000) (citations omitted). The Ninth Circuit has also described the status quo as “the legally relevant relationship between the parties before the controversy arose.” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1061 (9th Cir. 2014).

For example, in *Flying T Ranch*, the plaintiff used a disputed road running over the defendant's property for access. *Id.*, ¶¶ 3-4. The defendant had locked a gate over the road but then acquiesced to the plaintiff's use. *Id.*, ¶ 7. As a result, the plaintiff used the road for three years until the defendant locked the gate again, prompting the plaintiff to use an alternative route for access. *Id.*, ¶¶ 7-8. Shortly after defendant locked the gate, the plaintiff filed suit and sought injunctive relief. *Id.*, ¶¶ 9-10. In response, the defendant argued that the status quo between the parties was the access condition at the time the complaint was filed—when the gate was locked and the plaintiff was using an alternative access to reach its property. *Id.*, ¶¶ 28-29. This Court rejected that contention. *Id.*, ¶ 30. Instead, this Court held that the status quo was the access condition during the three years before the complaint was filed—where plaintiff had used the disputed road without a locked gate—finding that the defendant's act of locking the gate triggered an escalation between the parties and the lawsuit and, as a result, could not be "peaceable." *Id.*

This Court reached a similar conclusion in *Flora v. Clearman*, 2016 MT 290, 385 Mont. 341, 384 P.3d 448. There, the plaintiffs began using the disputed road in 2009, after purchasing an easement from a neighbor and constructing a new driveway connecting their property to the disputed road. *Id.*, ¶¶ 2-7. The dispute arose after the defendant's purchased real property along the disputed road, also in 2009, and culminated in the defendants rendering the plaintiff's driveway unusable

in 2010. *Id.*, ¶ 7. The plaintiffs filed suit in May 2011 and moved for injunctive relief in June 2014 to stop defendants from interfering with their access to the disputed road. *Id.*, ¶¶ 9-10. On appeal, this Court concluded that the last peaceable noncontested condition occurred well before the motion for preliminary injunction and before the filing of the action. *Id.*, ¶ 23.

Here, consistent with *Flying T Ranch* and *Flora*, the status quo was Lone Peak's un-interfered with easement rights in the fall of 2020, when Lone Peak began constructing a residence on the Lone Peak Property—that is “the legally relevant relationship between the parties before the controversy arose.” *Ariz. Dream Act Coal.*, 757 F.3d at 1061. As Stephenson admits, after construction began, and for months before he filed his Complaint, “Lone Peak and its agents made continuous use of Stephenson's property, including driving over and across the property, parking vehicles on the property, placing materials and equipment on the property, and staging construction activities on the property.” (Doc. 67 at 6). That is the status quo in this case.

Stephenson admits he did not install any of the interferences until roughly two years later: he admits the landscape boulders and landscape materials were first installed in the spring of 2022 and the speed bump was installed in the fall of 2022. He further admits that he installed the landscape boulders within the 30-Foot Easement and installed the speed bump within the Cul-de-sac Easement. By

installing landscaping materials, boulders, and a speed bump, Stephenson interfered with Lone Peak’s access. The District Court preserved the status quo by ordering those interferences removed.

On appeal, and disregarding his contrary admissions, Stephenson argues that Lone Peak “currently enjoys the same access it had under the status quo prior to litigation.” Op. Br. at 8. Stephenson claims Lone Peak’s access is “unhindered” and unobstructed. Op. Br. at 9-10. Stephenson goes so far as to argue that “[t]he evidence before the Court was clear, however, that Lone Peak currently enjoys the same access it had under the status quo prior to litigation.” Op. Br. at 8. The record conclusively proves the opposite; the actions Stephenson took after suing Lone Peak wrongfully interfered with Lone Peak’s access to its property and changed the status quo.

B. This Is Not A Mandatory Injunction Under This Court’s Recent Decision In *Mercer*.

During the pendency of this appeal, this Court decided *Mercer v. Montana Department of Public Health and Human Services*, holding that a heightened standard of review applied to “mandatory” preliminary injunctions— those injunctions that alter the status quo because the status quo is the source of the applicant’s injury. *Mercer*, ¶¶ 14, 23.

Mercer is distinguishable from this case. First, the difference between a prohibitory and mandatory injunction is sometimes fuzzy at best. *See Hernandez v.*

Sessions, 872 F.3d 976, 997 (9th Cir. 2017). While the preliminary injunction issued here does order the removal of the interferences Stephenson installed, it is not a mandatory preliminary injunction within the meaning of *Mercer* for a simple reason: the status quo is not the source of Lone Peak’s injury. *Mercer*, ¶ 15 (noting that the status quo was the source of the applicant’s alleged injury). Instead, the status quo here is the 30-Foot Access Easement and Cul-de-sac Easement without the interferences that were installed by Stephenson after Lone Peak’s counterclaims were filed.

Second, the factual circumstances of Lone Peak’s preliminary injunction differ substantially from those in *Mercer*. There, the applicant was seeking child abuse/neglect records that were subject to heightened confidentiality protections and limited instances of disclosure. Thus, the status quo was non-disclosure of highly sensitive, confidential records, which rendered Representative Mercer’s request to review those documents “mandatory” in nature and contrary to the status quo. But here, although the District Court required Stephenson to take action, such action was to restore the status quo.

Third, *Mercer* does not address the significant difference of opinions between the federal courts regarding the distinction between mandatory and prohibitory injunctions. For example, the Sixth Circuit has found “the distinction between mandatory and prohibitory injunctive relief is not meaningful” and

explicitly rejected the heightened standard. *United Food & Commercial Works Union, Local 1099 v. Sw. Ohio Reg'l Transit Auth.*, 163 F.3d 341, 348 (6th Cir. 1998). The Seventh Circuit has similarly rejected the difference. *See Chicago United Indus., Ltd. v. City of Chicago*, 445 F.3d 940, 944 (7th Cir. 2006). Even the Second Circuit, which follows the heightened standard, has acknowledged that the distinctions can sometimes become “more semantic than substantive.” *Tom Doherty Assocs., Inc. v. Saban Entm't, Inc.*, 60 F.3d 27, 34 (2d Cir. 1995). The Tenth Circuit, too, has noted that splitting the two can be “vexing” especially in situations with “important competing status quos.” *O Centro Espirita Beneficente Uniao do Vegetal v. Ashcroft*, 389 F.3d 973, 1006 (10th Cir. 2004). Even the Ninth Circuit, which follows the heightened standard approach, has recognized the “inherent contradictions underlying the somewhat artificial legal construct.” *Hernandez*, 872 F.3d at 998.

This Court should use this opportunity to clarify that the heightened standard applicable to mandatory injunctions only applies when the injunction itself alters the status quo because the status quo is the source of the complained of injury—as it was in *Mercer*.

III. STEPHENSON FAILS TO ESTABLISH AN ABUSE OF DISCRETION BECAUSE THE DISTRICT COURT’S UNCHALLENGED FINDINGS ARE SUFFICIENT, BY THEMSELVES, TO SUPPORT ENTRY OF THE PRELIMINARY INJUNCTION

As this Court recently acknowledged, this Court does not “reweigh conflicting evidence” or “question a district court's assessment of the strength of the evidence on a preliminary injunction appeal.” *Cross by & through Cross v. State*, 2024 MT 303, ¶ 38, ___ Mont. ___, 560 P.3d 637 (citations omitted). Under this limited review, Stephenson must establish an “obvious, evident, or unmistakable” abuse of discretion. *See Mercer*, ¶ 9.

Stephenson argues the District Court abused its discretion because the injunction fails to preserve the status quo. In support, Stephenson challenges several of the District Court’s findings, including those relating to emergency vehicles and fire trucks.

Even assuming that every objection Stephenson raises were supported by the record, this Court should still affirm the District Court because Findings of Fact and Conclusions of Law that Stephenson does not challenge are sufficient—by themselves—to support the preliminary injunction.

The reason is simple: on appeal, Stephenson contends that Lone Peak’s easement rights are limited to the “Driveway” and not to the 30-Foot Easement and the Cul-de-sac Easement. In doing so, he does not confront the evidence

considered by the District Court establishing his interference with the 30-Foot Easement and the Cul-de-sac Easement because those interferences were not placed within the “Driveway.”

For example, Stephenson does not contest that Lone Peak’s employees, including Ms. Harris and Mr. McDonald, have testified that the speed bump interferes with their ability to access the Lone Peak Property, particularly in the winter. Stephenson does not challenge the clearance issues created by the speed bump, the speed bump’s effect of making the Lone Peak Property only accessible by off-road vehicles in the winter, and that, at least two times, the speed bump prevented vehicles from reaching the Lone Peak Property. Stephenson does not contest that his landscaping boulders prevent Lone Peak from using the full width of the 30-Foot Easement or challenge Lone Peak’s testimony that it would like to use the full width of said easement. Stephenson does not address the fact that his interferences prevent the full use of the Cul-de-sac Easement. Finally, Stephenson does not challenge evidence that the purpose of the Cul-de-sac Easement is to connect to the 30-Foot Easement and that, therefore, both easements are integral to Lone Peak’s access.

The foregoing uncontested findings solidly support the District Court’s discretionary decision to grant injunctive relief. Those same findings demonstrate that the District Court did not act arbitrarily, without employment of conscientious

judgment, or exceed the bounds of reason resulting in substantial injustice. Nor does Stephenson present any argument that the injunction has resulted in a “substantial injustice.” For good reason. Stephenson wants to interfere with Lone Peak’s easement rights so that he can landscape his property. Preventing such landscaping pending a decision on the merits will not result in a substantial injustice.

The District Court’s decision can be affirmed on these grounds alone.

IV. THE DISTRICT COURT DID NOT MANIFESTLY ABUSE ITS DISCRETION IN GRANTING THE PRELIMINARY INJUNCTION

A. The “Serious Questions” Test Is Met Here.

While this appeal was pending, this Court decided *Stensvad v. Newman Ayers Ranch, Inc.*, and adopted the “serious questions” test which requires an applicant seeking a preliminary injunction to demonstrate that “serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff’s favor.” *Stensvad*, ¶ 25. This Court concluded that “[u]nless it is clear that an applicant fails to raise serious questions going to the merits, a district court should likewise consider and address each of the remaining factors.” *Id.*, ¶ 29. Here, by reaching the four statutory factors, the District Court confirmed that there were serious questions going to the merits and, as demonstrated above, ultimately conclude that Lone Peak was likely to prevail on the merits. Further, the balance of hardships in this case strongly favors Lone Peak’s position. In short, Stephenson’s

only claimed hardship is his inability to landscape portions of easements enjoyed by Lone Peak during the pendency of this case. Stephenson's aesthetic interests cannot outweigh Lone Peak's right and desire to access its property and to do so in a safe and efficient manner.

B. The District Court Did Not Abuse Its Discretion In Finding That Lone Peak Was Likely To Succeed On The Merits Of Its Claims.

The District Court's decision that Lone Peak was likely to succeed on the merits of its counterclaims against Stephenson consisted of three parts, Order at 9: first, Lone Peak established a prima facie case that the 30-Foot Easement was valid, *id.*; second, Lone Peak established a prima facie case that the Cul-de-sac Easement was valid, Order at 10-11; and third, Lone Peak established a prima facie case that Stephenson was interfering with Lone Peak's easement rights, Order at 11-13.

1. The District Court Properly Found That Lone Peak Was Likely To Succeed In Establishing The Validity Of The 30-Foot Easement

The District Court determined that Lone Peak made a prima facie case that it had "a 30 foot wide access easement located on the Stephenson Property, as set forth in the [Smith-Lone Peak Deed]," noting that Stephenson conceded the existence of both the 30-Foot Easement and the Cul-de-sac Easement by incorporating the same into the 2013 Agreement. Order at 9. On appeal, Stephenson never addresses that concession. As a result, he cannot demonstrate

that the District Court abused its discretion when it relied on his admission to find that Lone Peak was likely to succeed on the 30-Foot Easement.

The argument Stephenson does raise on this point lacks merit. Op. Br. at 24-26. Stephenson claims that the 30-Foot Easement is invalid because it “was not recorded in the chain of title for Stephenson’s property at the time Stephenson acquired it.” Op. Br. at 25. But Smith conveyed the Lone Peak Property to Lone Peak by a warranty deed recorded on January 18, 2005, that included an express grant of easement over the Stephenson Property:

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 part of this document.

Supp.App. 40-42. The Stephenson Property is the referenced “Lot 11,” and the deed creating the 30-Foot Easement was recorded before Stephenson took title to the Stephenson Property.

Stepheson admits these facts, Op. Br. at 11, but contends that the 30-Foot Easement is invalid under the “narrow chain-of-title” doctrine because the warranty deed by which the 30-Foot Easement was created was not recorded in the chain of title for the Stephenson Property, Op. Br. at 25. That is not the law in Montana: this Court expressly rejected the “narrow chain-of-title” doctrine in *Earl v. Pavex Corp.*, 2013 MT 343, ¶ 25, 372 Mont. 476, 313 P.3d 154.

As explained in *Earl*, “[t]he narrow chain-of-title concept creates an unacceptable risk that an otherwise valid and recorded easement will be extinguished through mere failure to mention the easement in a deed conveying the servient property.” *Id.* This Court concluded that such a risk was “contrary to the recording system's purpose of ‘impart[ing] constructive notice to subsequent purchasers that there exists another interest in the property.’” *Id.* (quoting *Erler v. Creative Fin. & Invs.*, 2009 MT 36, ¶ 21, 349 Mont. 207, 203 P.3d 744). In rejecting the narrow chain-of-title doctrine, this Court also expressly overruled *Nelson v. Barlow*⁷ and similar cases “to the limited extent that [those] cases support the narrow chain-of-title rule.” *Earl*, ¶ 31.

The 30-Foot Easement is an express easement and is recorded. By statute, “[e]very conveyance of real property acknowledged or proved and certified and recorded as prescribed by law, from the time it is filed with the county clerk for record, is constructive notice of the contents thereof to subsequent purchasers and mortgagees.” § 70–21–302(1), MCA. In this context, a “conveyance” includes “every instrument in writing by which any estate or interest in real property is

⁷ *Nelson v. Barlow*, 2008 MT 68, 342 Mont. 93, 179 P.3d 529.

created, aliened, mortgaged, or encumbered or by which the title to real property may be affected, except wills.” § 70–21–301, MCA.

These statutes provide the foundation for *Earl*'s conclusion that “[a] purchaser cannot ignore such deeds issued by a common grantor, or fail to search for them, on the theory that the deeds are outside the servient estate’s ‘chain of title.’ To hold otherwise would undermine the broad constructive notice afforded recorded conveyances under the recording statutes.” *Earl*, ¶ 26 (citations omitted).

Applied here, *Earl* leads to a straightforward result and the same one reached by the District Court: Smith—Lone Peak’s and Stephenson’s common grantor—recorded a warranty deed that created the 30-Foot Easement over the Stephenson Property years before Stephenson purchased it from Smith; as a result, Stephenson had constructive notice of the 30-Foot Easement and, under *Earl*, cannot invalidate the 30-Foot Easement by claiming it was not in his chain of title.

Stephenson’s argument is factually incompatible with his own actions. The 2013 Agreement expressly depicts both the 30-Foot Easement and the Cul-de-sac Easement. If the 30-Foot Easement was not in Stephenson’s chain of title (and he knew nothing about it as he now claims), why did he reference the same in the 2013 Agreement? Not only did he have constructive notice, as a matter of law, § 70–21–302(1), MCA, but he had actual notice, too.

Stephenson does not make any argument that *Earl* should be altered, or the law should be changed. Instead, Stephenson argues vaguely that the narrow chain-of-title doctrine still applies to all conveyances before *Earl* was decided. Op. Br. at 25-26 (“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.”). Had *Earl* merely distinguished *Nelson*, Stephenson may be able to find support for his argument. But *Earl* overruled *Nelson*, meaning *Nelson* is no longer good law. Subsequent decisions of this Court make clear that Stephenson’s premise—that the narrow chain of title doctrine still applies to all conveyances before *Earl* was decided—is wrong. See, e.g., *Lewis & Clark Cnty. v. Hampton*, 2014 MT 207, ¶¶ 7, 65, 376 Mont. 137, 333 P.3d 205 (applying *Earl* and finding that the parties had constructive notice of a document recorded in 1993); *Scott v. Lee & Donna Metcalf Charitable Tr.*, 2015 MT 265, ¶¶ 3, 15, 381 Mont. 64, 358 P.3d 879 (applying *Earl* and finding that the parties had constructive notice of a document recorded in 1996).

In short, attempting to read this Court’s overruling of *Nelson* as prospective only—as Stephenson suggests—only makes sense if *Nelson* is still good law. But *Nelson* is not. This Court did not qualify its rejection of the narrow chain-of-title

doctrine, nor did it limit its overruling of *Nelson* to only those later-recorded conveyances.

2. The District Court Properly Found That Lone Peak Was Likely To Succeed In Establishing The Validity Of The Cul-de-sac Easement

Stephenson argues that the District Court erred in finding Lone Peak was likely to succeed on the Cul-de-sac Easement because the easement was not “clearly depicted and adequately described” as required by this Court’s easement by reference jurisprudence. Op. Br. at 26-27. This argument is unsupported by the record and incorrect as a matter of law.

The Stephenson Property was conveyed to Stephenson by the Smith–Stephenson Deed recorded August 11, 2010. Pursuant to that conveyance, Stephenson took title to “Lot 11 of Certificate of Survey No. 1754A, located in Section 6, Township 7 South, Range 4 East, P.M.M., Gallatin County, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder, Gallatin County.” Supp.App. 43. And Stephenson took title to the Stephenson Property subject to “all . . . covenants, easements, agreements, conditions and rights of way of record and those which would be disclosed by an examination of the property.” *Id.*

“[W]hen land is sold with reference to a properly recorded plat, the plat becomes part of the instrument conveying the interest in land.” *Blazer v. Wall*,

2008 MT 145, ¶ 36, 343 Mont. 173, 183 P.3d 84 (citing *Halverson v. Turner*, 268 Mont. 168, 173, 885 P.2d 1285, 1289 (Mont. 1994)). Pursuant to *Blazer* and *Halverson*, when Smith sold the Stephenson Property to Stephenson in 2010, COS 1754A became part of the Smith-Stephenson Deed. The effect of that reference was a reservation of an easement over the Stephenson Property. *Halverson*, 268 Mont. at 174, 885 P.2d at 1289 (holding that a grantor had properly reserved an easement over the grantee's property by referring to a recorded certificate of survey which clearly showed and adequately described the easement at issue).

The District Court concluded that COS 1754A allows the parties to ascertain the location of the easement with reasonable certainty based on the testimony of both Stephenson's expert, Lapp, and Lone Peak's expert, Ziska. Order at 10-11. The District Court also concluded that identities of the dominant and servient tenements were reasonably ascertainable because the Smith-Stephenson Deed referenced COS 1754A. Order at 11.

The District Court further concluded the Affidavit of Dedication created the Cul-de-sac Easement and was recorded, Order at 3, which imputes notice to Stephenson, § 70-21-302(1), MCA. Stephenson does not challenge the District Court's conclusion concerning the Affidavit of Dedication on appeal and does not address the fact that the Smith-Lone Peak Deed also incorporated by reference the

Cul-de-sac Easement. Order at 3-4. Instead, Stephenson advances a nonsensical, unsupported argument about the beneficiary of the 60-foot-wide platted easement.

Stephenson argues that the District Court abused its discretion because “the easement depicted on COS 1754 and COS 1754A is a road easement benefitting the members of Skywood Preserve Owner’s Association, Inc. as members of said association, and not an access easement benefitting Lone Peak’s property specifically.” Op. Br. at 24-25 (emphasis original). Stephenson further argues that “neither COS 1754 nor COS 1754A provides any information suggesting that Lone Peak’s property should be understood as the dominant tenement or that the easement is to be used a as a private access easement.” Op. Br. at 26. This argument makes little sense.

First, the Affidavit of Dedication states that “[t]he 60’ access shown on Certificate of Survey No.s 1741 and 1754 . . . are hereby granted as easements 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.” Supp.App. 5 (emphasis added). The Lone Peak Property is Lot 13 of COS 1754, later COS 1754A. Thus, the Affidavit of Dedication is conclusive evidence that the Cul-de-sac Easement benefits Lone Peak, specifically, as the District Court concluded, Order at 3.

Second, as the District Court found, when Stephenson executed the 2013 Agreement, he incorporated by reference the Smith-Lone Peak Deed, which expressly depicted the Cul-de-sac Easement burdening the Stephenson Property. Order at 4-5. Stephenson does not address this finding on appeal. If COS 1754A does not depict the Cul-de-sac Easement, then how was Stephenson able to incorporate the same into the 2013 Agreement?

Stephenson does not, and cannot, show that the District Court manifestly abused its discretion when determining that Lone Peak made a prima facie case of its entitlement to the Cul-de-sac Easement, particularly when he fails to confront the District Court's finding that Stephenson himself admitted to it in 2013.

3. The District Court Properly Found Lone Peak Likely To Establish That Stephenson Had Interfered With Lone Peak's Easements

The Court determined that Lone Peak made a prima facie case of Stephenson's unreasonable interference with both the 30-Foot Easement and the Cul-de-sac Easement. Order at 11-13. The Court noted that "[a]n immovable encroachment constitutes an unreasonable interference with an easement right," and that a servient owner is precluded from erecting or placing "any structures that encroach on a right-of-way." *Id.* at 12. The District Court held that the landscaping boulders placed by Stephenson unreasonably interfered with both the 30-Foot Easement, because they prevented Lone Peak from using the entire width of the

30-Foot Easement, and the Cul-de-sac Easement, because they prevented Lone Peak from using a portion of the Cul-de-sac Easement. *Id.* at 11–13.

The District Court also concluded that Stephenson’s speed bump unreasonably interfered with the Cul-de-sac Easement by making it so only off-road vehicles can access the Lone Peak Property; by prohibiting the use of the Cul-de-sac Easement by ordinary vehicles, ambulances, and fire trucks in the winter; and, by making the Cul-de-sac Easement “more inconvenient to use year-round.” *Id.* at 13.

On appeal, Stephenson does not appear to argue that the District Court abused its discretion by finding that Lone Peak had made a prima facie showing that Stephenson had interfered with the 30-Foot Easement or the Cul-de-sac Easement. Instead, he focuses on the “Driveway,” which—as discussed above—is only a small segment of the 30-Foot Easement and the Cul-de-sac Easement. By his own admission, Stephenson installed landscaping boulders within the 30-Foot Easement and a speed bump within the Cul-de-sac Easement. These admissions alone establish the District Court did not manifestly abuse its discretion in finding Lone Peak likely to succeed on its claim that Stephenson had interfered with its easements.

C. The District Court Properly Found That Lone Peak Had Established That It Would Suffer Irreparable Harm

The District Court concluded Lone Peak was likely to suffer irreparable harm in the absence of injunctive relief because Stephenson's interferences affected Lone Peak's and others' ability to "safely and effectively access the Lone Peak Property." Order at 13-14. The District Court determined that only injunctive relief could alleviate the risk of harm created by Stephenson's conduct. *Id.* at 14.

On appeal, Stephenson contends the District Court abused its discretion by finding that Lone Peak had established a likelihood of irreparable harm. Stephenson claims he has not "affected Lone Peak's ability to access its property," and that no evidence supports the District Court's conclusion that the speed bump interferes with emergency vehicle access to the Lone Peak Property. Stephenson also contends that the status quo between the parties was Lone Peak's inability to use the full 30-Foot width of the 30-Foot Easement and the Cul-de-sac Easement. Again, these arguments are unsupported by the record.

First, as Stephenson admitted below, the status quo in this case is before his Complaint was filed, Hr'g Tr. 113:6-12, *i.e.*, before the point in time in which he installed the interferences targeted by the preliminary injunction. As explained above, the status quo is Lone Peak's ability to use the entire width of the 30-Foot Easement and all of the Cul-de-sac Easement. *Flynn*, 219 Mont. at 361, 711 P.2d at

1372 (an easement holder is entitled to use the easement to the full extent for which it was established).

Second, the record provides ample support for the District Court's conclusion that the speed bump interferes with emergency vehicle access to the Lone Peak Property. *See, e.g.*, Supp.App. 39 (Big Sky Fire Department's letter in support of the cul-de-sac describing its importance in terms of safe access for emergency vehicles); Supp.App. 7-11 (Affidavit of Leo McDonald stating that emergency vehicles would not be able to access the Lone Peak property in the winter due to the ruts created by Stephenson and the speed bump).

Third, the record also provides conclusive evidence that Stephenson has interfered with Lone Peak's ability to access the Lone Peak Property through the 30-Foot Easement and the Cul-de-sac Easement. Stephenson admitted to installing the landscaping boulders within the 30-Foot Easement, installing the speed bump within the Cul-de-sac Easement, and to installing those things after this litigation began. He does not address the testimony of Ms. Harris or Mr. McDonald, which demonstrate that his admitted actions have interfered with Lone Peak's access to the Lone Peak Property. Rather than address this record evidence, Stephenson focuses on the "Driveway," which is irrelevant because none of the interferences exist within the "Driveway" as he defines it.

Finally, the District Court’s decision adheres to this Court’s precedent. *Musselshell Ranch Co. v. Seidel-Joukova*, 2011 MT 217, ¶ 19, 362 Mont. 1, 281 P.3d 570 (holding that the owner of a servient estate may not unreasonably interfere with or obstruct an easement, that an immovable encroachment constitutes an unreasonable interference with an easement right, and that the owner of a servient estate cannot erect or place any structures that encroach on a right-of-way).

The District Court did not manifestly abuse its discretion in finding that Lone Peak would suffer irreparable harm in the absence of injunctive relief.

D. The District Court Did Not Abuse Its Discretion By Finding The Balance Of Equities Favors Lone Peak

The District Court determined that the balance of equities weighed in Lone Peak’s favor because, first, “the right and need of Lone Peak, its guests, and emergency vehicles to get to the Lone Peak Property outweighs Stephenson’s desire to landscape,” and, second, the injunction would do no more than require Stephenson to follow the law. Order at 14. On appeal, Stephenson argues against only the second part of the District Court’s conclusion. Stephenson does not contest the District Court’s conclusion that Lone Peak’s right to access its property

greatly outweighs Stephenson’s “desire to landscape.”⁸ Stephenson has failed to meet his burden to establish that the District Court abused its discretion in finding that the balance of equities favors Lone Peak.

E. The District Court Did Not Abuse Its Discretion By Finding That The Preliminary Injunction Was In The Public Interest

The District Court concluded that issuance of injunctive relief was in the public interest because it is in the public interest “to ensure property owners and residents can access their property and residences,” and to “allow emergency services, such as fire trucks, safe and effective access to the [Lone Peak Property.]” Order at 14.

On appeal, Stephenson does not challenge that either of these findings properly reflect the public interest and, instead, claims that the record does not support their relevance here. Stephenson is wrong.

First, Stephenson claims that the injunction cannot serve the public interest of ensuring property owners ability to access their properties 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

⁸ Additionally, the second reason—that the injunction only required Stephenson to comply with the law—was also an appropriate basis on which to find that the equities favored Lone Peak.

Driveway.” Op. Br. at 34. Again, Stephenson’s narrow focus on the “Driveway” is a distraction. The “Driveway” as Stephenson defines it on appeal, has not been interfered with. Stephenson’s refusal to accurately confront his admitted interference with the 30-Foot Easement and Cul-de-sac Easement renders his opposition to the District Court’s conclusion on this point irrelevant.

Second, with respect to the District Court’s finding that it is in the public interest to allow emergency vehicles to access the Lone Peak Property, Stephenson again does not challenge the existence of that interest but claims that it is unsupported by the record. Op. Br. at 34-35. Not so. Stephenson ignores that the Big Sky Fire Department submitted a letter in support of the cul-de-sac, stating that “a properly designed cul-de-sac will provide a designated area for [fire trucks and ambulances] to turn around safely and efficiently.” Supp.App. 39.

Lastly, Stephenson’s contention that the injunction cannot be in the public interest because it unlawfully deprives him of his rights as a property owner should be disregarded. Stephenson took title to the Stephenson Property subject to the 30-Foot Easement and the Cul-de-sac Easement—a fact that he acknowledged when executing the 2013 Agreement. As a result, whatever “rights” he has in his property do not extend to interfering with those easements. *Fox v. BHCC II, Inc.*, 2017 MT 218, ¶ 27, 388 Mont. 443, 401 P.3d 705 (holding that the owner of a servient tenement “may make use of the land 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.”).

Stephenson has failed to demonstrate that the District Court manifestly abused its discretion in finding that issuance of the preliminary injunction was in the public interest.

V. STEPHENSON’S CONTENTION THAT HE WAS PREVENTED FROM ARGUING THE VALIDITY OF THE EASEMENTS AT ISSUE SHOULD BE DISREGARDED

Attempting to chisel at the edges of the merits, Stephenson now argues that the District Court abused its discretion by assuming, for purposes of the Hearing, that the 30-Foot Easement and the Cul-de-sac Easement were valid. This argument lacks merit. Stephenson ignores that he filed no fewer than three briefs opposing Lone Peak’s motion for a preliminary injunction and that the issue of the easements’ validity was before the Court on the parties’ briefing. Stephenson cites no authority for the premise that a District Court cannot focus the parties’ arguments at such a hearing, as the District Court did here. Such a practice preserves judicial economy as well as the parties’ resources.

CONCLUSION

For these reasons, Lone Peak respectfully requests that this Court affirm the District Court.

DATED this 3rd day of February, 2025.

CROWLEY FLECK PLLP

By/s/Kelsey Bunkers _____

Kelsey Bunkers

P. O. Box 10969

Bozeman, MT 59719

Attorneys for Appellee

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 9,863 words, excluding the 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 3rd day of February, 2025, I served a true and correct copy of the foregoing document to the following through the e-service platform:

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 Brief - Appellee's Response to the following on 02-03-2025:

Michael Lloyd Rabb (Attorney)
3950 Valley Commons Drive
Suite 1
Bozeman MT 59718
Representing: Steven Corry Stephenson
Service Method: eService

Electronically Signed By: Kelsey Evans Bunkers
Dated: 02-03-2025