

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA-25-0632

MICHAL CRAIG WILLIAMS,

Plaintiff/Appellant,

v.

BRIAN W. FOSTER; NICHOLETTE E. WALLNER,

Defendants/Appellees.

On Appeal from the Twenty-First District Court,
the Honorable Howard F. Recht, presiding Judge
Cause No. DA-25-0632

APPELLEES' JOINT RESPONSE BRIEF

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STATEMENT OF ISSUES

1. Is the District Court's finding that the Forest Service Trail easement is located where Foster developed his road for access to his property clearly erroneous?
2. Is the District Court's conclusion of law that the Forest Service Trail easement is not appurtenant to the Williams property, correct?

STATEMENT OF THE CASE

Plaintiff/Appellant Michael Craig Williams ("Williams") filed his Complaint on September 29, 2022 (Doc. 1), and a Second Amended Complaint on February 16, 2023 (Doc. 31). The crux of Williams' claim was that of trespass and quiet title against Defendant/Appellee Brian Foster ("Foster") for the road he developed on Williams's and Wallner's property. Plaintiff alleged the road was developed on a route which was not the location of the Forest Service Trail easement. Williams also brought a quiet title action against Defendant/Appellee Nicholette Wallner ("Wallner") and sought the right to use the Forest Service Trail easement across her property to access the national forest.

Foster counterclaimed for declaratory judgment and quiet title. (Doc. 12 and 30) He claimed the Forest Service Trail easement was located where he developed the road to his property.

Wallner asserted counterclaims for declaratory judgment and quiet title. (Doc. 13 and 30) Wallner asserted Williams did not have the right to use the Forest

Service Trail easement across her and Foster's property to access the national forest.

As set forth in more detail in the Court's *Judgment* (Doc. 92), the District Court determined the Forest Service Trail easement is located where Foster developed his road (with the exception of a certain portion of that road, which is not disputed by either party), that the Forest Service Trail easement originates on Williams's property, that Williams's property is subject to the Forest Service Trail easement, and that the Forest Service Trail easement is not appurtenant to either of Williams's parcels.

STATEMENT OF FACTS

Wallner owns two parcels of property located in Section 29, Township 7 North, Range 21 West, Ravalli County, Montana. The two parcels are generally described as the $W\frac{1}{2}W\frac{1}{2}NE\frac{1}{4}NE\frac{1}{4}$ and the $E\frac{1}{2}E\frac{1}{2}NW\frac{1}{4}NE\frac{1}{4}$ of Section 29, T7N, R21W, according to Certificate of Survey No. 131. These parcels were originally conveyed separately (hereinafter the $W\frac{1}{2}W\frac{1}{2}NE\frac{1}{4}NE\frac{1}{4}$ "Wallner East Parcel" and the $E\frac{1}{2}E\frac{1}{2}NW\frac{1}{4}NE\frac{1}{4}$ "Wallner West Parcel").

Foster owns property described as the West 990 feet of the $NW\frac{1}{4}NE\frac{1}{4}$ of Section 29, Township 7 North, Range 21 West, more particularly, the three parcels were described as the $W\frac{1}{2}W\frac{1}{2}NW\frac{1}{4}NE\frac{1}{4}$, $E\frac{1}{2}W\frac{1}{2}NW\frac{1}{4}NE\frac{1}{4}$ and the

W $\frac{1}{2}$ E $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ as shown on COS No. 131. These parcels were conveyed together (hereinafter the “Foster Parcels”).

Williams acquired two parcels of property located in Section 29, Township 7 North, Range 21 West, Ravalli County, Montana. The two parcels are described as the E $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ and the W $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29, T7N, R21W, according to Certificate of Survey No. 131. These parcels were conveyed together (hereinafter “Williams Parcels”).

In 1966, Carl W. Saunders obtained an interest in the entire N $\frac{1}{2}$ NE $\frac{1}{4}$ Section 29 and other property in Sections 20 and 21, Township 7 North, Range 21 West. The N $\frac{1}{2}$ NE $\frac{1}{4}$ Section 29 was divided into eight parcels through Certificate of Survey No. 131. Exhibit B-2.

In the early 1970s, Saunders began conveying the parcels created through Certificate of Survey No. 131, most of which were on contract. The first parcel he conveyed was the Wallner West Parcel. A Notice of Purchaser’s Interest dated October 1, 1970, was recorded in Book 128 Page 4. Exhibit C.

The deed was subsequently recorded in Book 156 Page 349 on August 20, 1982. Exhibit B-3.

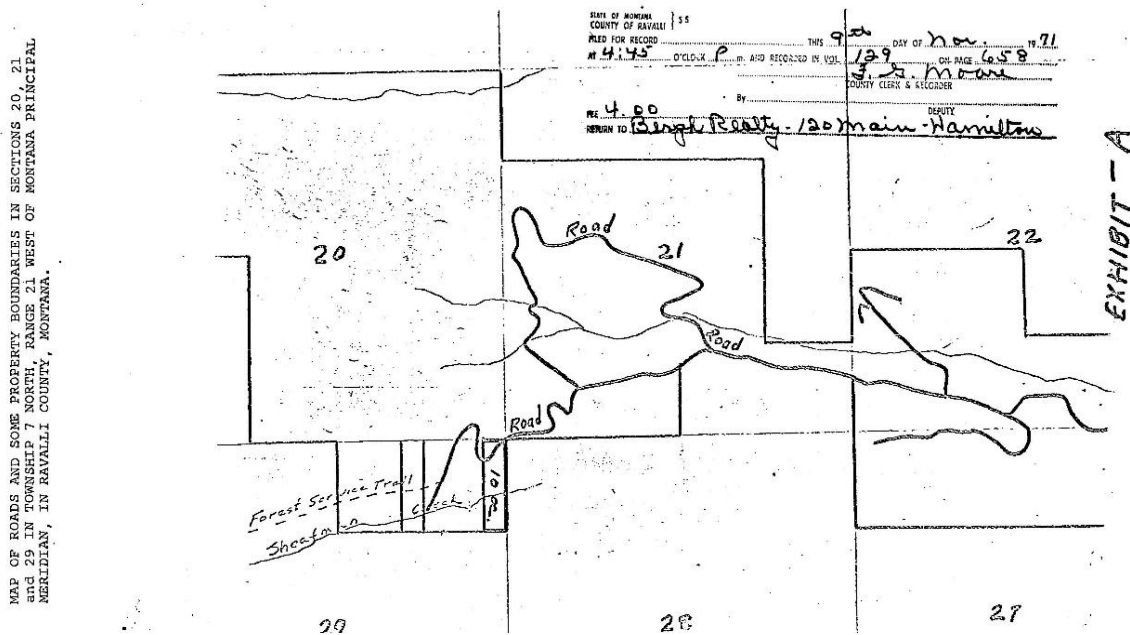
The next parcel Saunders conveyed an interest in, was the eastern most parcel of Certificate of Survey No. 131, the E $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$. A Notice of Purchasers’ Interest dated September 23, 1971, was recorded in Book 129 Page

658 on November 9, 1971, that included the following language:

...together with an easement for road purposes on such parts of the existing loop road in Section 21 and the road into Sections 20 and 29 as Seller owns, said roads being shown on the attached Exhibit A, and to the extent that Seller has any rights on the Sheafman Creek Trail used by the U.S. Forest Service in Section 29, Buyer is granted an easement for road purposes on it;"

Exhibit B-23.

The NPI included a hand drawn map labeled as "EXHIBIT-A"



The deed for this parcel was subsequently recorded in Book 145 Page 674 recorded on December 23, 1977. Exhibit D. Therefore, Saunders only granted an easement on the Forest Service Trail to the "Buyer" of this parcel, which parcel is not at issue in this matter.

The Wallner East parcel was first conveyed from Saunders in an NPI dated October 4, 1971, recorded in Book 129 Page 659 on November 9, 1971. Exhibit B-24. The NPI included the same language as in Book 129 Page 658 and the same Exhibit A easement document. Saunders granted this “Buyer” of the Wallner East parcel an easement to the Forest Service Trail. The deed was subsequently recorded in Book 141 Page 28 on September 7, 1976. Exhibit B-10. The fact that Saunders conveyed this parcel with the easement for the Forest Service Trail indicates the Trail did not originate on this parcel, which would have negated the need for granting such an easement.

The Warranty Deed recorded in Book 184 Page 626, dated December 17, 1979, for the current Williams properties was made subject to the following:

SUBJECT TO an easement for road purposes across the above described premises for the benefit of land owners across whose land said road cross and landowners of land adjacent to said road, and as shown on plat attached to Book 129 Deeds, page 658.

SUBJECT TO an easement for road and utility purposes with right of ingress and egress across the above-described premises for the benefit of land owners across whose land said roads cross and landowners of land adjacent to said roads, said roads comprising the existing roads now crossing said premises and including the old forest service road.

Nothing in the deed granted or conveyed any road or access easements to the Williams properties. These parcels were conveyed from the same common owner (Saunders) in 1979, after he had conveyed the Wallner East Parcel, only holding an

NPI interest in the Wallner West Parcel, and while still owning the Foster parcels. Therefore, Saunders could not grant any easements across the Wallner parcels and specifically did not convey any easements to the Foster parcels. Additionally, the fact that the deed was made subject to “the old forest service road” indicates Saunders had knowledge of its location and that it was physically located on what is now Williams’s parcels.

The subsequent deeds for the Williams parcels recorded in 2005 as Document Nos. 563625 and 563626, changed the language to “TOGETHER WITH an easement for road purposes as disclosed in Book 129, Page 658.” This language was in error as Book 129 Page 658 was for the eastern most parcel ($E\frac{1}{2}E\frac{1}{2}NE\frac{1}{4}NE\frac{1}{4}$) which had been conveyed via the deed recorded in Book 145 Page 674 executed on September 23, 1971. Therefore, because these deeds were executed after Saunders conveyed both the Wallner parcels and the eastern most parcel, and the owner at the time, Rudolph, never owned any other parcels, Rudolph could not grant any rights across any other lands including the Wallner and Foster parcels, and could not obtain any rights granted to the eastern most parcel.

The hand drawn Exhibit A attached to both relevant easements in Book 129 Page 658 and Book 129 Page 659 shows the approximate location of the Forest Service Trail easement. The Wallner and Foster parcels have easements for Bourne

Ridge Road and for road purposes on the Forest Service Trail easement conveyed through deeds and as depicted in the NPIs recorded in Books 129 Pages 658 and 659. The deeds were executed on the same dates as the NPIs and were recorded in Book 145 Page 674 and Book 141 Page 28, respectively. The deeds include the same language and Exhibit A as the NPIs. Wallner and Foster can therefore access their properties via Bourne Ridge Road and the Forest Service Trail easement.

In or about July 2021, Brian Foster developed a roadway along the Forest Service Trail easement, which originated from Bourne Ridge Road.

Ms. Turek opined that Foster developed his road in the location of the “Forest Service Trail” on Exhibit A and consistent with easements described in Book 127 Pages 526 and 527. Exhibit B-26 and B27. The Foster Road is in the same location as Mr. Jessop’s survey of the “Existing Old Road/Tail Cut.” Exhibit 16. Portions of this old logging road also appeared in several other aerial photographs from 1995 to 2019. Exhibit B-28.

The current Foster Road which departs from Bourne Ridge Road is shown on a 2021 aerial photograph. Exhibit B-28. The photograph shows the Foster Road in the same location as the “Forest Service Trail” easement described on Exhibit A, Book 129 Page 658.

Ms. Turek also had personal knowledge of features on the ground from several site visits. Trial Transcript (“Transcript”), December 9-10, 2024; 70:19-

72:5. She confirmed there has never been a trail along Sheafman Creek west of the Wallner property. *Id.* The area near the boundary with Foster's property consists of braided stream channels, and there was no evidence of any trail or road in this area. Transcript; 70:19-72:5, 336:18-339:2. Furthermore, the area west of the Wallner property has steep rock formations that make any road building impossible. Transcript; 336:18-339:2, 348:5-13; Exhibits CC, DD, and EE.

Plaintiff's hired expert, Mr. Jessop, agreed that Exhibit A is not drawn to scale, the location of the property boundary lines as shown on Exhibit A are not accurate, and the location of Bourne Ridge Road, as drawn on Exhibit A, is not accurate. Transcript; 102:17-25, 106:3-14. He further testified that his overlay of the Exhibit A was "skewed" based on the control points he chose. Transcript; 104:20-105:7. Mr. Jessop also testified it is possible that the Forest Service Trail depicted on "Exhibit A" of the conveying documents, may actually depart from Bourne Ridge Road on the Williams property. Transcript; 102:17-107:9. And finally, Mr. Jessop admitted he could not refute the opinions of Ms. Turek, the Defendants' expert as to the location of the Forest Service Trail. Transcript; 111:16-112:1.

Nicholette Wallner testified to her use and knowledge of Bourne Ridge Road since she first acquired her parcels in 2006 and that when she first acquired her property, Bourne Ridge Road terminated at her house. Transcript; 146:10-13. The

area west of her house was overgrown and impassable. Transcript; 163:19-164:20. She improved a “jeep trail” from the end of the existing road to the west that terminated on her property, but this was not used by any other person for access to the west. *Id.*

She and Foster agreed he does not have any easement or access via her “jeep trail” and that they both had an easement to build a roadway on the “Forest Service Trail” that originated on Williams’ property. Transcript; 158:18-24. Wallner did give Foster permission to use Bourne Ridge Road and her “jeep trail” to perform fire mitigation activities. Transcript; 163:19-164:17; Exhibits V-Y. The “jeep trail” was never improved or extended. Foster accessed his property via a four-wheeled vehicle. Transcript; 163:19-166:16.

Wallner and Foster discussed the location of the Forest Service Trail easement with Mr. Stepanek (owner of the Williams property immediately prior to Williams) because he had concerns about having a road directly across from his house. Transcript; 160:2-161:1, 216:9-16, 227:23-228:23. Foster, Wallner, and Stepanek agreed that the “Forest Service Trail” originated on what was at the time the Stepanek property. *Id.*

Foster and others used the road, which he later developed as his driveway, for access to his property. When Foster was looking at the property to purchase it, he and the real estate agent parked their vehicles off Bourne Ridge Road where he

eventually developed his driveway. Transcript; 224:15-225:10. When leaving the property, he and the real estate agent returned to Bourne Ridge road via foot down by Sheafman creek and through Wallner's property. Transcript; 225:11-25. When traveling along Sheafman creek to return to Bourne Ridge road, no trail existed. *Id.* There was no ability to establish an access road to the upper portion of his Foster property from Sheafman creek given the terrain of the property by Sheafman creek and the rock cliffs. Transcript 226:227:10; Exhibits DD, EE.

When Foster constructed the road in or around July 2021, he received no objection from Stepanek regarding the location of the road. Transcript; 231:8-25. Foster interacted with Stepanek at times while using the road he improved by waiving to each other. *Id.*

The road was in existence when Craig Williams acquired the property from Stepanek, and it was apparent and easily recognizable, as evidenced by the photos, including a photo of Williams standing on the road. Exhibits O-T and Z.

STANDARD OF REVIEW

The Montana Supreme Court reviews a district court's findings of fact to determine whether they are clearly erroneous. *Wiegele v. West Dry Creek Ranch, LLC*, 2019 MT 254, ¶ 14, 397 Mont. 414, 450 P.3d 879, citing *Ganoung v. Stiles*, 2017 MT 176, ¶ 13, 388 Mont. 152, 398 P.3d 282 (citations omitted). "A finding is clearly erroneous if it is not supported by substantial evidence, if the trial court

misapprehended the effect of the evidence, or if our review of the record convinces us that a mistake has been made.” *Wiegele v. West Dry Creek Ranch, LLC*, ¶ 14.

“Substantial evidence is evidence which a reasonable mind might accept has adequate to support a conclusion, even if the evidence is weak or conflicting.”

Wiegele v. West Dry Creek Ranch, LLC, ¶ 14, citing *Skelton Ranch, Inc. v. Pondera Cty. Canal & Reservoir Co.*, 2014 MT 167 ¶ 27, 375 Mont. 327, 328 P.3d 644.

As to conclusions of law, the Montana Supreme Court reviews the same for correctness. *Pub. Lands Access Ass’n v. Bd. of Cty. Comm’rs*, 2014 MT 10, ¶ 14, 373 Mont. 277, 321 P.3d 38 (citations omitted).

SUMMARY OF ARGUMENT

The District Court’s finding of fact regarding the location of the Forest Service Trail easement is based on substantial and unrefuted evidence. Its legal conclusion that Williams has no right to use the Forest Service Trail easement to access the national forest is correct. Appellant asks this Court to reweigh the evidence and substitute his preferred interpretation of the record for that of the District Court’s.

First, the District Court did not clearly err in finding the Forest Service Trail easement is located where Foster developed his road, except for the initial “existing/newly cut road” segment, a segment the District Court ordered to be restored. The District Court’s finding regarding the location of the easement was

based on, among other evidence: (1) the expert testimony of Tracey Turek, who analyzed the Saunders Map, historical deeds, aerial photographs, topography, on-the-ground conditions, and the 1967 USGS quadrangle map; (2) testimony from Foster and Wallner which confirms the historic use of the trail in that location; (3) evidence on the ground which evidences the location of the easement; (4) language of the relevant deeds that subjected Williams' property to the easement; and (5) the fact that Williams' own expert, Paul Jessop, expressly testified he could not refute Turek's conclusions and could not identify the location of the Forest Service Trail.

Second, the District Court's conclusion of law that the Forest Service Trail is not appurtenant to Williams's property is correct. No instrument in Williams's chain of title conveys to his property an easement for the use of Forest Service Trail. The NPI referenced in Williams's deed does not grant such an easement, and the 1979 Saunders-to-Rudolph deed burdened Williams's property with the Forest Service Trail but did not grant Williams any right to use it.

Williams' additional arguments, regarding claims of an "illegal easement shift," and an alleged duty by Foster to maintain a different route, are based on his incorrect assumption that the Forest Service Trail easement lies along Sheafman Creek. The District Court properly rejected that premise. Williams's arguments fail.

ARGUMENT

A. The District Court's Finding that the Forest Service Trail is Located Where Foster Built His Road is Not Clearly Erroneous.

The District Court determined the Forest Service Trail easement is located where Foster developed the road to access his property. Appellant argues the District Court's finding on this issue was clearly erroneous. In support of this argument, Appellant argues the Saunders Map, aerial photographs, and historical use all show the location of the Forest Service Trail easement to be where Williams asserted it is, at the end of Bourne Ridge Road and adjacent to Sheafman Creek.

The District Court's Finding of Fact No. 55 provides "that the Forest Service Trail is located where Foster built his road with the exception of that portion depicted on the survey by Jessop and labeled 'existing/newly cut road,' which is where Foster deviated from the historic location of the Trail, by agreement with Williams' predecessor in interest." The District Court's finding is based on substantial evidence, and a review of the record does not indicate a mistake was made, or that the District Court misapprehended the effect of the evidence. Most notably, Appellees' expert witness, Tracey Turek, concluded that, in her expert opinion, Foster's road is in the location of the Forest Service Trail easement. Exhibit B, pg. 20. And moreover, Williams' own expert testified that he cannot refute Ms. Turek's opinion. Transcript 111:16-112:1.

1. **Substantial evidence, including the Saunders Map, ariel photographs, and historical use, supports the finding that the Forest Service Trail easement is located where Foster developed his road, except for that portion labeled as “existing/newly cut road.”**

The record is replete with evidence in support of the District Court’s finding regarding the location of the Forest Service Trail easement.

Saunders Map

Appellant’s claim that the Saunders Map supports Williams's proposed location of the Forest Service Trail easement fails and is contrary to the evidence established at trial. Williams’s argument at trial was that the Forest Service Trail easement was located at the end of Bourne Ridge Road, that it departed off Bourne Ridge Road on Wallner’s property, and that it was located close to and along Sheafman Creek. Transcript; 349:24-350:12. Instead, substantial evidence at trial established the opposite, i.e., the Saunders Map supports the Court’s finding that the Forest Service Trail easement is located where Foster developed his road.

First, the Saunders Map used to depict the general location of the Forest Service Trail easement shows the Forest Service Trail departing from Bourne Ridge Road north of its terminus and north of Sheafman Creek. Finding of Fact, No. 47; Transcript; 65:1-6, 178:16-21, 342:9-346:3, 350:18-351:7; Exhibit B, pg. 17.

Secondly, Appellees' expert, Tracey Turek, testified regarding her report, Exhibit B, and explained why the Saunders Map supports the District Court's finding regarding the location of the easement. Given that the Saunders Map was hand drawn and not drawn to scale (Exhibit B, page 16), Ms. Turek created an adjusted overlay to account for the "skew" in the hand drawn Saunders Map. Exhibit B, pg. 17. She specifically provided that:

To account for the "skew" in the hand drawn Exhibit A, the Road [Bourne Ridge Road] should be depicted by referencing it to the most relative accurate points to the physical roadway location which are through the E $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ and the northern crest of the loop in Section 20. If the Road is referenced by these points, it shows a more accurate representation of the Road and Forest Service Trail locations depicted on Exhibit A. By adjusting for the "skew", the Forest Service Trail originates from the Road on the Williams western parcel (E $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$). Additionally, if you take into account the Road on Exhibit A is drawn with a greater width than the actual Bourne Ridge Road, it would shift the Road and Forest Service Trail even further to the northeast, but would still be located on the Williams western parcel.

Ms. Turek's findings related to the Saunders Map (also referenced as "Exhibit A" in her expert report), are bolstered by other evidence within her expert report, including but not limited to, relevant deeds, personal observations of the properties at issue, Google aerial photographs, and Mr. Jessop's survey. Exhibit B, pgs. 14-20.

Third, Williams' own expert witness, Mr. Jessop, testified he has no ability to refute Ms. Turek's findings or conclusion set forth in her expert report.

Transcript; 111:16-112:1. In fact, he went a step further and testified he cannot state where the Forest Service Trail easement is located, nor could he state the Forest Service Trail easement did not depart from Bourne Ridge Road on the Williams property. Transcript; 107:5-12.

Aerial Photographs

As to Appellant's claim that aerial photographs show the Forest Service Trail easement to be where Williams asserted it is, Tracey Turek testified that she took into consideration aerial photographs in forming her opinion. She more specifically stated her conclusion was "corroborated by the old aerial photographs that we have gone through numerous times that show what I consider the old logging road originates (sic) on the Williams' property across from the cabin." Transcript; 354:24-355:11. And again, Williams' own expert confirmed he had no ability to refute this. Transcript; 111:16-112:1.

Moreover, the Court specifically reasoned that Foster's road follows an existing road or trail on an aerial or satellite map. Finding of Fact No. 42; Exhibit 16. The photographs Appellant includes on pages 34 and 36 of his opening brief do not identify the easement in pink. Instead, they identify the path Foster and Wallner created for the purpose of fire mitigation they performed on the bottom

portion of their properties years after the Forest Service Trail easement was established. Transcript; 136:9-137:10, 175:20-24, 197:15-198:1, 198:7-199:7.

Historical Use

As to Appellant's claim that the historical use shows the location of the Forest Service Trail easement to be where Williams asserted it is, substantial evidence shows otherwise. Mr. Stepanek, the owner of the Williams properties immediately prior to Williams' purchase of the property, did not dispute that the Forest Service Trail easement was where Foster developed his road. Transcript; 160:22-24. Foster, Stepanek, and Wallner all agreed the Forest Service Trail easement was where Foster developed his road. Transcript; 227:23-228:20. Foster testified that he used the Forest Service Trail easement, where he developed his roadway to his property, when he and the seller's agent viewed the property. Transcript; 195:2-5. He testified he used the same path via foot or bicycle prior to developing the road. Transcript; 197:9-14. Foster also testified that before he developed the easement, it was clear to him that from previous years there had been a road there, but said road was not yet fully developed. Transcript; 141:20-24.

Mr. Stepanek had personal knowledge of the presence of Foster's road. Stepanek, Foster and Wallner had a meeting in or around August 2020 about developing the Forest Service Trail easement for Foster's access to his property. Transcript; 176:4-24, 227:23-229:22. Foster began work on the roadway in or

around June 2021. Transcript; 230:3-6. Foster had multiple interactions with Stepanek during the period of construction for the road development and after the road was completed. Transcript; 230:7-231:25. Stepanek never once objected to the presence of the road to Foster. Transcript; 231:8-25.

Wallner and Foster were the only witnesses able to present any testimony regarding what was present on the ground before Foster developed the road on the Forest Service Trail easement. Transcript; 361:8-362:11. Wallner testified that, what she referred to as a logging road, was present where Foster developed his road long before Foster or Williams owned their current parcels. Transcript; 167:5-25.

Turek's expert report also established that the historical use of the trail supported her conclusions. For example, she explained the 1967 USGS QUAD map, which was created prior to the date the Forest Service Trail easement was established, shows a dashed line representing the location of a roadway/trail. This dashed line, when considering the elevation and physical representation of the map, matches the location where Foster developed his road. Exhibit B, pgs. 12-13. Turek also explained that the location of Williams' proposed easement would require Foster to access the top portion of his property, the only portion upon which a building site could be located, with climbing equipment. Finding of Fact No. 49.

The conveying documents are also relevant to the historical use of the trail. On December 17, 1979, Saunders conveyed what is now the Williams property to the Rudolfs. Exhibit B-16. The Rudolfs were Williams' predecessor in interest. As the District Court explained, this conveyance subjected Williams' property to an easement for road purposes as shown on the plat attached to Book 129 Deeds, page 658, which was the Saunders Map. Exhibit B-16; Finding of Fact No. 19. The Forest Service Trail easement therefore passed through the chain of title and thus made Williams' property subject to the Forest Service Trail easement. Williams' property would not be subject to the Forest Service Trail easement if it did not exist on his property. Finding of Fact No. 55.

Conclusion

As to the location of the Forest Service Trail easement, the Court reached its conclusion because: "(i) there is evidence on the ground supporting the claim that a trail was located there; (ii) logically, Williams' property would not be subject to the Forest Service Trail if it did not exist on his property; (iii) placing the Forest Service Trail in this location is consistent with Turek's opinion; (iv) placing the Forest Service Trail there is not contrary to Jessop's opinion." Finding of Fact No. 55. Each specific reason referenced by the Court was based on substantial evidence presented at trial as discussed above, and the record does not in any way indicate a mistake has been made.

2. Foster did not commit, nor did the District Court permit an illegal easement shift.

Appellant's statement of the law relevant to easement shifts is generally accurate. However, this argument assumes the threshold question, i.e., the location of the Forest Service Trail easement, has already been answered in Williams' favor, which is not correct.

The law relevant to easement shifting applies when a party builds in a different location from an easement. Here, Foster developed his road on the actual location of the Forest Service Trail easement, as the District Court found, and therefore did not "shift" the easement. The only genuine "shift" in this case consisted of the initial segment of Foster's road, which has been identified as the "existing/newly cut road" where Foster deviated from the historic location of the Forest Service Trail by agreement with Williams' predecessor in interest, Stepanek. Finding of Fact No. 55. As to the "existing/newly cut road" portion of Foster's road, the District Court held Foster has no right to an easement at this location and ordered it to be restored to its previous condition. Conclusion of Law No.16-17, Appellant does not dispute this decision by the District Court.

As set forth above, the District Court's finding regarding the location of the Forest Service Trail easement must be affirmed. And because the Court held that Foster's road was developed on the Forest Service Trail easement, but for the

“existing/newly cut road,” no easement shift has been committed by Foster or allowed by the District Court.

3. Foster did not breach his duty to maintain the Forest Service Trail easement on Wallner and Foster’s property.

Appellant’s Opening Brief claims Foster was obligated to maintain the route Appellant identified as the easement, not develop the Forest Service Trail easement. This argument again assumes the Forest Service Trail easement is at the location where Appellant claimed it was during the trial. The responsibility to maintain an easement applies only to its actual location. The District Court confirmed Foster properly developed the Forest Service Trail easement for access to his property. Foster did not breach his duty to maintain the Forest Service Trail easement. Foster had no duty to maintain the route Williams asserted was the easement.

B. The District Court’s Conclusion of Law that the Forest Service Trail easement is not appurtenant to Williams’s property is correct.

As set forth above, the parties agreed the controlling documents are the NPIs recorded in Book 129 Pages 658 and 659. Though NPIs do not convey title to the respective properties, both properties were subsequently conveyed via deeds executed on the same date as the NPIs that include the same language as Exhibit A. *O’Keefe v. Mustang Ranches HOA*, 2019 MT 179, ¶ 14, 396 Mont. 454, 446 P.3d 509 (“We have also analyzed language of conveyance as the language that

effectuates the grantor's intended purpose for that instrument; that is, in the case of an easement, whether the instrument's purpose expressly included an intention to grant the easement"). The NPIs and simultaneously executed deeds specifically describe an easement for road purposes along the "Forest Service Trail." Exhibit B-23. The grant identifies Saunders' intent to convey the easement to both the Wallner and Foster parcels for access. The NPIs and deeds both include Exhibit A that depicted the location of the easement.

Whether the easement is created via express language, depiction in a certificate of survey, or a combination of both, "the essential requirement in all three situations is the same with regard to the description: an individual examining the transaction documents must be able to ascertain, with reasonable certainty, the intended dominant and servient tenements and the easement's use or necessity." *Yorum Props., Ltd. v. Lincoln Cnty.*, 2013 MT 298, ¶ 25, 372 Mont. 159, 311 P.3d 748 (citations omitted). Requiring this information ensures the servient owner "can determine the extent of the burden on the servient land." *Id.* This enables both the "dominant and servient landowners to ensure that the terms of the easement are being honored, and it gives notice of the burden to prospective purchasers of the servient estate under the recording statutes." *Id.*

Where an easement is described only generally, the result is the easement, by its nature, is ambiguous. *Strahan v. Bush*, 237 Mont. 265, 268, 773 P.2d 718 (1989)

(“If the easement is not specifically defined, it need only be such as is reasonably necessary and convenient for the purpose for which it was created. It is sometimes held ... where the grant or reservation of an easement is general in its terms, that an exercise of the right, with the acquiescence and consent of both parties, in a particular course or manner, fixes the right and limits it to that particular course or manner”). Like a prescriptive easement, a broadly defined express easement is restricted in its use by how its rights are exercised.

In *Strahan*, the court determined that the easement's granting language, i.e., “for purposes of providing ingress and egress to the above-described land which easement shall be over and across the existing road,” amounted to a general grant, leaving ambiguity regarding the scope and characteristics of the easement. *Id.* Due to the ambiguity, the Court turned to the parties’ exercise of the easement to determine the proper nature and extent of the easement. *Id.*

Here, the deeds to both the Wallner and Foster properties each contain a general description of the easement and the hand drawn map. The grant of the easement was general in its terms as it did not specify the exact location of where the “Forest Service Trail” was to originate from Bourne Ridge Road. Specifically, the conveyance language used refers to “an easement for road purposes as disclosed in Book 129 Deeds, page 658.” Exhibit T. Book 129 Deeds, page 658 identifies an easement:

For **road purposes** on such parts of the existing loop road in Section 21 and the road into Sections 20 and 29 as seller owns, said roads being shown on the attached exhibit A, and to the extent that Seller has any rights on the Sheafman Crook Trail used by the U.S. Forest Service in Section 29, Buter is granted an easement **for road purposes on it.**

Exhibit B-23 (emphasis added). Because the grant was general, the Court was left to interpret the parties' exercise of right to determine its location, scope and extent. *Strahan*, 237 Mont. at 268. The best interpretation of the hand drawn map was made by the Defendants' expert Ms. Turek, who placed the Forest Service Trail's origination on Williams' property. As explained above, the Court adopted Turek's opinion and determined the Forest Service Trail originated on Williams's property and that Williams's property was encumbered by an easement benefitting Wallner and Foster. However, it also held that the easement was not appurtenant to Williams's property.

The 1979 Deed from Saunders to Rudolph (Book 184 Page 626) did not grant any easements to the current Williams's property, but instead specifically encumbered the properties to certain easements, including the Forest Service Trail easement. Saunders' specific inclusion for the "old forest service road" shows it was his intent and understanding the road was on this property. The "TOGETHER WITH" language in subsequent deeds was in error. The deeds show Rudolph did

not own any other properties in Section 29 and therefore could not grant any rights to or through other properties that he did not own.

Therefore, there is no evidence whatsoever that any of the documents ever provided Williams an easement to access Forest Service lands. Williams incorrectly assumed that the label "Forest Service Trail" on the map gave him permission to enter Forest Service lands. Williams can offer no documentation or other evidence that his property ever enjoyed any easement to access Forest Service lands through any portion of either the Wallner or Foster parcels.

The undisputed facts show Foster and Wallner have an easement that was granted for the use of both Bourne Ridge Road and the "Forest Service Trail." The easement was depicted on the hand drawn map, and when all inferences are made as to the intent of the map and documents, it is clear the "Forest Service Trail" was only to provide Wallner and Foster access to properties in which they have an interest. There was no other purpose for these road easements. No instrument in Williams's chain of title conveys to him an easement for his benefit on the Forest Service Trail easement.

The District Court is in the best position to weigh the relevant evidence and this Court will not overturn evidentiary findings and credibility determinations of the District Court absent clear error. *In re Kesler*, 2018 MT 231, ¶ 17, 392 Mont. 540, 427 P.3d 77 ("It is the function of the district court, however, to weigh the

testimony and determine witness credibility. It is the district court that must resolve conflicts in testimony. We will not substitute our judgment for that of the district court on such issues”). The District Court relied on Ms. Turek’s credibility, and Williams’s expert, Mr. Jessop’s, testimony that he could not refute Ms. Turek’s opinion, to correctly conclude the location of the Forest Service Trail. In this case, the District Court did not err in concluding the Forest Service Trail easement is not appurtenant to Williams’s property. No instrument in the chain of title to Williams’ property conveys to him the right to use the Forest Service Trail easement.

CONCLUSION

The District Court did not clearly error in finding that the Forest Service Trail easement is located where Foster developed his road, except for the limited segment identified as the “existing/newly cut road.” That finding is supported by, among other things, unrefuted expert testimony, documentary evidence and deeds, historical use, and witness testimony. The District Court was also correct in concluding the Forest Service Trail easement is not appurtenant to Williams’s property, as no instrument in Williams’ chain of title conveys such a right.

DATED this 18th day of March 2026.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4), Mont. R. App. P., I certify that Appellees' Joint Response Brief is double spaced, proportionately spaced in 14-point Times New Roman typeface and contains 5,996 words.

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CERTIFICATE OF SERVICE

I hereby certify that on March 18, 2026, I filed a true copy of the foregoing Appellees' Joint Response Brief with the Clerk of the Montana Supreme Court and that I have served a true copy of the foregoing upon each attorney of record through the electronic filing system:

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