

IN THE YMCA MODEL SUPREME COURT OF THE STATE OF MONTANA
No. 2010-001

SUZANNA AND SAMUEL SHOOTER, on behalf of
Friends of the Hunters, and unincorporated organization,

Plaintiffs and Appellants,

v.

THE LONE WOLF RANCH, owned and operated by
Sarah and Stephen Solitude,

Defendants and Respondents,

BRIEF OF APPELLANT

On appeal from the District Court of
the Twenty-Fifth Judicial District of the State of Montana,
in and for the County of Lonely Deer

ORAL ARGUMENT REQUESTED

APPEARANCES:

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ATTORNEYS FOR PLAINTIFF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....1

STATEMENT OF THE ISSUES.....2

STATEMENT OF THE FACTS.....2

ARGUMENT.....5

 I. THE DISTRICT COURT ERRED IN ITS DECISION THAT THE
 LONE WOLF RANCH DID NOT HAVE TO HONOR THE PREVIOUS
 AGREEMENT FOR USE OF THE ROAD FOR HUNTING ACCESS.....5

 A. The plaintiffs had an interest in the property.....5

 B. Written contracts supersede oral contracts.....5

 C. Money is a form of good consideration.....6

 II. THE DISTRICT COURT ERRED IN RULING THAT THE HUNTING
 ACCESS ROAD WAS NOT A PUBLIC ROAD.....6

 A. The road qualifies as a public prescriptive easement.....6

 B. Historical patents establish county roads.....7

 C. There was adverse possession of the road.....7

CONCLUSION.....8

TABLE OF AUTHORITIES

Cases

Scott v. Eagle Watch Investments, Inc., 251 Mont. 191, 828 P. 2d 1346 (1991).....5

Constitutional Provisions

NONE

Statutes

Montana Code Annotated, §28-2-903 (2009).....5

Montana Code Annotated, §28-2-904 (1947).....5

Montana Code Annotated, §28-2-801 (2009).....6

Montana Code Annotated, §7-14-2622 (2009).....7

STATEMENT OF THE ISSUES

1. Did the District Court err in its decision that the Lone Wolf Ranch did not have to honor the previous agreement for use of the road for hunting access?
2. Did the District Court err in ruling that the hunting access road was not a public road?

STATEMENT OF THE FACTS

Suzanna and Samuel Shooter, often accompanied by other friends and fellow hunters have hunted for the past seven years on one hundred square miles of Forest Service land valued for elk, deer, and bighorn sheep. They accessed the Forest Service by traveling over a road located on the Lone Wolf Ranch just south of Lonely Deer, Montana. The only other access was via a public road on the opposite side of the Forest Service land, which required driving over 30 miles via highway and then another 10 miles over an old logging road.

The Shooters had always obtained the permission of the Sociables, previous owners of the Lone Wolf Ranch. The Shooters and the Sociables also had become friends over the years that the Shooters had utilized the road.

Two years ago, in order to formalize their oral agreement, the Shooters and Lone Wolf Ranch drafted a handwritten contract, which they wrote up together over coffee in the Sociables' kitchen. It allowed the Shooters and their friends access across the ranch to the Forest Service during hunting season. The agreement read as follows: "The owners of Lone Wolf Ranch hereby allow Suzanna and/or Samuel Shooter, and any other friends of the hunters, to access the Forest Service land during hunting season for the next five years by crossing our land on the ranch road." Everyone signed it, dated it, and to formalize the agreement, the Shooters gave the Sociables a dollar bill.

However, a year later, Mr. Sociable died unexpectedly and Mrs. Sociable sold The Lone Wolf Ranch to Sarah and Stephen Solitude. Hunting season occurred soon after the Ranch changed hands and the Solitudes had not yet moved onto the Ranch. Therefore, the Sociables and some of their friends and associates continued to utilize the road for hunting. However, when the Solitudes returned with the rest of their belongings and discovered the road use, they promptly erected a gate across the road that crossed their deeded land. Since hunting season was still open, the Shooters attempted to contact the Sociables but were unable to do so because they had an unlisted phone, so they just opened (and closed) the gate, using the road as usual to access the Forest Service parcel. Upon discovering this, the Solitudes chained the gate shut and padlocked it.

When the Sociables confronted Stephen Solitude about the gate, he informed them that he was under no obligation to continue the agreement the previous owners had entered into. Solitude further stated that they had moved to Montana and had purchased the property because of its privacy and had no intention of allowing hunters, or anyone else for that matter, to use their road for any purpose. The Solitudes did acknowledge that the hand-written agreement was included in their documents when they closed the purchase on the ranch, but did not acknowledge that they had an obligation to abide by the previous agreement.

So the Shooters got together with their friends, pooled their money to hire a lawyer, and formed "Friends of the Hunters." Friends filed a lawsuit in district court, contending that the Ranch had violated the agreement to keep that road open for at least five years. They argued that the language of the agreement bound not only the Sociables, but also their successors, the Solitudes. The suit also contended that the road was a public road.

At trial, Friends of the Hunters produced a witness, Dillard Driver, aged eighty-eight, who stated that the road had been used by the public since 1917, and that he himself had used the road off and on for hunting access for the prior sixty years. They also had an expert witness testify that the earliest patent for the lands now owned by the Ranch was dated 1919. Patents secured land ownership and helped settle the west in the late 1800s and early 1900s. Also at trial, Friends of the Hunters produced a General Land Office Map dated 1918, showing the road. They argued that the road was a County Road that had never been abandoned. However, no other records were produced showing that the County had ever included the road into its system.

A retired county road foreman testified that the County once plowed snow off the road, to allow stranded hunters to return home. He did not remember the year, but stated it was probably more than ten years prior.

The Solitudes testified that they were unaware of any easement for the hunting-access road when they purchased the property, and they were unwilling to honor the previous agreement for access. They claimed that there was no prescriptive easement formed by the permissive use of the road by the Shooters, and that the written agreement only applied to the Sociables, not to them.

The District Court ruled in favor of the Solitudes and Lone Wolf Ranch, and this appeal followed.

ARGUMENT

I. THE DISTRICT COURT ERRED IN ITS DECISION THAT THE LONE WOLF RANCH DID NOT HAVE TO HONOR THE PREVIOUS AGREEMENT FOR USE OF THE ROAD FOR HUNTING ACCESS.

A. The plaintiffs had an interest in the property.

Under § 28-2-903, MCA, a contract that is for an interest in property must be signed by both parties. The Shooters clearly had an interest in using the road to hunt, and followed correct conduct by establishing a written agreement to do so. They had a valid and reasonable point to sign the contract

B. Written contracts supersede oral contracts.

§28-2-904, MCA, reads as follows:

The execution of a contract in writing, whether the law requires it to be written or not, supersedes all the oral negotiations or stipulations concerning its matter which preceded or accompanied the execution of the instrument.

When the Shooters put their use of the Sociables' road into a formal written contract, all other oral agreements between the two parties regarding the matter of using the land were superseded.

In the case of *Scott v. Eagle Watch Investments, Inc.*, 251 Mont. 191, 828 P.2d 1346 (1991), the Montana Supreme Court ruled in favor of the defendant, stating that because there wasn't any written contract between the two parties, the employer could not be forced to give the employee his job back. Had the employee made a formal written contract with his employer, the decision might have been reversed.

This is relevant because it shows just how much a written contract matters in superseding all oral agreements.

The fact that the Solitudes knew of this written agreement between the Shooters and the previous owners and willingly purchased the property with that in mind, made the Solitudes step into the “shoes” of the Sociables and gave them an obligation to continue fulfilling the contract.

C. Money is a form of good consideration.

§ 28-2-801, MCA, reads as follows:

Any benefit conferred or agreed to be conferred upon the promisor by any other person, to which the promisor is not lawfully entitled, or any prejudice suffered or agreed to be suffered by the person, other than prejudice that the person is at the time of consent lawfully bound to suffer, as an inducement to the promisor is a good consideration for a promise.

In the case of the Shooters, the dollar that they gave to the Sociables at the time of the signing of the contract was a form of “good consideration.” They weren’t lawfully bound to paying them when they signed the contract, but they chose to do so anyway. They performed this action with the intention that by doing so, they were backing up their promise to the Sociables.

II. THE DISTRICT COURT ERRED IN RULING THAT THE HUNTING ROAD WAS NOT A PUBLIC ROAD.

A. The road qualifies as a public prescriptive easement.

A public prescriptive easement is defined as the granting of an easement of a period of open and continuous use of land with the presumption that it can keep being used as such. The Shooters had used the Sociable’s land for hunting for at least seven years before the written contract was agreed upon, and had the intention to use it for at least the next five years. The Sociables never once tried to stop the Shooters and because of this continued granted access, the

road would be considered to belong to the Shooters and their friends as well as the Sociables, under the common law of public prescriptive easements.

B. Historical patents establish county roads.

Under §7-14-2622, MCA, a road is deemed public or owned by the county under the following conditions:

1. The road has been altered or abandoned.
2. There is doubt about the legal establishment of the road.
3. The road has been continuously traveled by the public and maintained.
4. The road has been officially historically documented as a public road.

In the Shooter's case, an expert witness testified that the earliest patent for lands owned by the Ranch were dated 1919. A number of patents were found that secured land ownership when the land was settled in the late 1800s and early 1900s. There was also a General Land Office Map from 1918 brought in, showing the road as being part of the county.

These general facts all follow point four, listed above, and help confirm the fact that the road is indeed owned by the county, making it a public road.

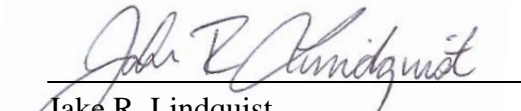
C. There was adverse possession of the road.

Adverse possession refers to the continued use of an item, until the point where it is considered to be "owned" by the one using it. According to the witness Dillard Driver, the road in question was traveled upon continuously by members of the public since 1917. Under §7-14-2622, MCA, this would follow part three, mentioned in the last point. With this logic, the road would belong to the public or county under the common law of adverse possession.

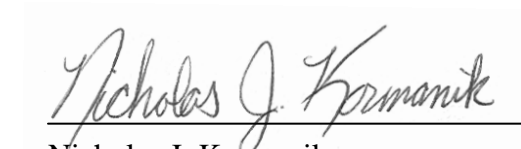
CONCLUSION

For the foregoing reasons, the decision of the District Court should be reversed.

Respectfully submitted this 11th day of April, 2010.



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