

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

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Suzanna and Samuel Shooter, on behalf of Friends of the Hunters, an unincorporated organization,

Plaintiffs and Appellants,

vs.

The Lone Wolf Ranch, owned and operated by Sarah and Stephen Solitude,

Defendants and Respondents.

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BRIEF OF APPELLANT

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On appeal from the District Court

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ORAL ARGUMENT REQUESTED

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APPEARANCES:

Rose Cote  
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Anna Gruber  
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ATTORNEYS FOR APPELLANTS

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## **TABLE OF AUTHORITIES**

### Cases

*Swandal Ranch Co. vs. Hunt*, No. 95-096 (1996)

*Halmes Livestock Company vs. Estate of William Russell Manger*, 1998 MT 82N (1998)

### Statutes

MCA § 7-14-2622

MCA § 28-2-903

MCA § 28-2-904

## **STATEMENT OF 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 were hunting on 100 square miles of Forest Service Land for the past seven years. To access the Forest Service Land they used the road located on the Lone Wolf Ranch owned by the Sociables. The only other option of accessing the land was 30 miles of driving on the highway then another 10 miles on a logging road.

Two years previous to a written agreement, the Shooters and Sociables had a clear oral agreement to allow the Shooters to access the Forest Service Land using the road. Two years later they drafted a handwritten contract that allowed the Shooters to access the hunting land during hunting season, “The owners of the Lone Wolf Ranch hereby allow Susanna 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.”

One year later, unexpectedly Mr. Sociable died, and Mrs. Sociable sold the ranch to Sarah and Steven Solitude. Soon after closing the purchase, hunting season started and the Solitudes had not completely settled onto the ranch. Therefore, the Shooters

continued to use the road assuming the agreement was still valid. When the Solitudes had settled into their home, they quickly realized the use of the road and immediately erected a gate preventing the Shooters from using it. This action was done without telling the Shooters that the agreement was off, other than constructing a “wall”. Confused, the Shooters tried to contact the Sociables but could not because of an unlisted phone number. Innocently, the Shooters continued to open and close the gate as they had done for several preceding years. Again, without diplomacy, the Solitudes padlocked the gate.

The Sociables discovered the locked gate and confronted the Solitudes about the gate, Stephen Solitude told them that he was under no obligation to continue the agreement the previous owners had entered into, completely ignoring the long standing, written agreement between the previous owners of the Lone Wolf Ranch, even though he was completely aware of the agreement when the purchase was closed. The Solitudes didn't take the handwritten agreement to be formal enough and dismissed the matter.

To protect their rights, the Shooters created the “Friends of the Hunters”. The friends filed suit claiming that the Solitudes violated their agreement for access to this road for at least five years.

At the trial, Dillon Driver stated the road had been used by the public since 1917 and even he had used the road for hunting access for the last sixty years. An expert witness stated that the road had been used for public access since 1919. The road was also on a map used by the public dated 1918. A retired county road foreman had plowed the road to rid it of snow.

## **Issue 1**

**The Lone Wolf Ranch must honor the previous agreement for use of the road for hunting access.**

### **A. The contract was valid.**

According to MCA § 28-2-903, which states

"d) an agreement for the leasing for a longer period than 1 year or for the sale of real property or of an interest in real property. The agreement, if made by an agent of the party sought to be charged, is invalid unless the authority of the agent is in writing and is subscribed by the party sought to be charged,"

Any agreement involving real estate must be in writing. Therefore the agreement between the previous owners of the Lone Wolf Ranch, and the Shooters which was written, signed, dated and given consideration as per MCA § 28-2-801, is valid and legal for the specified legal period of five years. Despite the friendship between the two parties, the contract was formalized and legal. It is reasonable then to assume that the *Halmes Livestock Company vs. Estate of William Russell Manger, 1998 MT 82N (1998)* which involves informal land use of neighboring landowners, does not apply to this factual background since the parties in the Manger case did not formalize their oral agreement,

"In this case, the record clearly shows that historically, the exchange and use of subject lands by the current owners and their predecessors was permissive, a neighborly accommodation. As a courtesy, each rancher permitted the other rancher to use and improve 300 acres of his land. Although a use permissive in its inception may ripen into a prescriptive easement, it cannot do so unless there is a later distinct and positive assertion of a right adverse to the owner."

Consequently, for the agreed upon time period of five years, the contract is valid.

**B. During the five year period with the contract, any owners of the Lone Wolf Ranch must abide by the contract.**

The Solitudes, when purchasing The Lone Wolf Ranch, knew of the valid agreement that was signed by the previous owners. They acknowledged it was clearly in the closing documents. The contract saying, "The owners of the 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." It was specific, stating who would be crossing the land and when, to get to what, and the consideration was identified. The contract also states, "THE OWNERS of the Lone Wolf Ranch....." (emphasis added), meaning any current or future owners must abide by it for the next five years, from the time the contract was made. The Solitudes were clearly made aware of the contract upon purchasing the land, and the contract applied to them, as owners of The Lone Wolf Ranch.

The oral denial of the contract and refusal to acknowledge its existence by the Solitudes does not mean the contract is no longer in existence. As a result during the five year period of the contract, any owners of the Lone Wolf Ranch must abide by the contract.

## **Issue 2**

**The hunting access road was a public easement, and the District Court should recognize it as a public road.**

**A. The hunting access road qualifies as a public easement because the Shooters proved that the hunting access road was used openly, notoriously, exclusively, adversely, continually, and uninterruptedly for five years.**

In *Swandal Ranch Co. vs. Hunt*, No. 95-096 (1996), the court defined the way for the public to acquire prescriptive easement to a private road, is that the public followed a

fixed and definite course continuously and uninterruptedly for the prescribed statutory period together with an assumption of control and use adverse to the owner. In Montana, a prescriptive easement is created by operation of the law. To establish a public or private easement by prescription, the party claiming the easement must show “open, notorious, exclusive, adverse, continuous, and uninterrupted use of the easement claimed for the full statutory period. The statutory period is five years.” For the past seven years, the Shooters used the road. The use was known by the Sociables, who obtained no benefit. Another witness testified that the access road had been used by the public for 90 years and he himself had used it for hunting access for the prior 60 years. In order for a claim to be adverse, “the use of the alleged easement must be exercised under a claim of right and not as a mere privileged or license revocable at the pleasure of the owner of the land; such claim must be known to, and acquiesced in by, the owner of the land.” Rappold, 849 P. 2d at 1019 (citing Keebler v. Harding (1991), 247 Mont. 518, 521, 807 P. 2d 1354, 1356-57) The road is considered adverse because a written agreement was settled, therefore, it is a right, not a privilege that the owners can take away at any time and the Solitudes knew about the written agreement when they bought the land and the documents for the land included the agreement for all the owners of the Lone Wolf Ranch not just the Sociables. In the written agreement it states “The owners...” Not only is the road adverse, but it has been used “continuously” and “uninterruptedly”. The other term to be defined is “notorious”. The agreement is notorious because the Solitudes knew about the agreement when they bought the land and a witness said it has been used since 1917 or even longer. Clearly the agreement is “open” because everyone in the public has used it for those many previous years. Finally, the last term to be defined in order to be a

public easement is “exclusive” and it is exclusive because it is not only the Shooters using the road, but “Friends of the Hunters” and the rest of the public.

**B. The District Court should recognize this public easement and proceed to establish a public road.**

Whenever there is uncertainty about whether the road is open to the public, the District Court has the ability to establish public right of way. The District Court should recognize the hunting access road on the Lone Wolf Ranch as a county road since there is much doubt about the legal establishment or evidence of establishment of the county road, the road has been traveled and used for more than 10 years, and the road is marked on a map. According to MCA § 7-14-2622, the county or directly affected persons can request that a district court recognize a route of a county road that is maintained by the county and used by the public as the legal route. Subsection (a) states if there is doubt about the legal establishment or evidence of establishment of the county road then the affected persons can request recognition, and in the Shooter’s case there is much doubt. Subsection (c) states the road as traveled and used for 10 years or more does not conform to the location of the road as described in county records. Witness Dillard Driver at age 88 in his long years of recollection testified that the road had been used by the public for the past 90 years and possibly before that. Subsection (2a) states that any maps or historical use information that may assist the court in determining whether or not to recognize the route. The General Land Office Map dated 1918 additionally shows this road on the map that the public uses. The county recognizes this road as they have plowed it for public use. Therefore, the court should and is legally able to determine this a public road since it would be in the best interest of Montana citizens.

**CONCLUSION**

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

Respectfully submitted this 23<sup>rd</sup> day of March, 2010.

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