

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, an unincorporated organization,
Plaintiffs and Appellants,

vs.

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

BRIEF OF APPELLANTS

On appeal from the District Court of the NUMBER District of the State
of Montana, in and for the county of COUNTY

ORAL ARGUMENT REQUESTED

APPEARANCES

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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 the 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 land 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 Shooters 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 Solitudes 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 Shooters 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

including 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 the 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 lands now owned by the Ranch was dated 1919. Patents secured land ownership and helped settle the west in the late 1800's and early 1900's. 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

1. THE DISTRICT COURT ERRED IN ITS DECISION THAT THE PRESENT OWNERS OF THE LONE WOLF RANCH DID NOT HAVE TO HONOR THE PREVIOUS AGREEMENT

A. The contract was valid and should have been followed.

The Solitudes testified that they were unwilling to honor the previous agreement to allow the Shooters and friends access. They claimed that the written agreement only applied to the Sociables, not them. According to the MCA 28-2-903, subpoint 1 (d), though,

"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 subscribed by the party sought be charged."

The agreement had been made in writing by the Sociables and read, "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.”

Hence, the agreement is valid. The contract stated that the owners of the Lone Wolf Ranch would allow the Shooter and friends of the hunters to cross their land on the way to the Forest Service Land. The Sociables are now the owners of the Lone Wolf Ranch and under the contract must allow the Shooters access.

B. The Shooters’ use of the Lone Wolf Ranches roads set up a prescriptive easement.

The Sociables testified that they were not aware of any easement for the hunting-access road when they purchased the property and that no prescriptive easement was formed by the permissive use of the road by the Shooters, so they were not bound by the contract.

In the case *Halmes Livestock Company vs. Estate of William Russell Manger*, 1998 MT 82N (1998), the court ruled that “a party seeking to establish a prescriptive easement must show open, notorious, exclusive, adverse, continuous, and uninterrupted use of the claimed easement for the statutory period.”

The Shooters, from the signing of the agreement until the Sociables built the gate, made open, notorious, exclusive, adverse, continuous, and uninterrupted use of the road. Thus a prescriptive easement had been formed.

2. DID THE DISTRICT COURT ERR IN RULING THAT THE HUNTING ACCESS ROAD WAS NOT A PUBLIC ROAD?

A. The road had been used by the public prior to the Lone Wolf Ranch becoming private property.

A witness for Friends of the Hunters, Dillard Driver, age eighty eight, stated that the road had been used by the public since 1917. According to an expert witness, the earliest patent for the lands now owned by the Ranch was dated 1919. The road was already a public road and continued to be one after the Lone Wolf Ranch was formed. Moreover, the road appeared on a General Land Office Map dated 1918, also prior to the patent.

CONCLUSION

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

Respectfully submitted this 16th day of March, 2010.

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