

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

Appellant/Plaintiff

VS

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

Respondent/Defendant

BRIEF OF RESPONDENT
ORAL ARGUMENT REQUESTED

APPEARANCES:

Jenna Carda
Miles City, MT

Shelbi Dobie
Miles City, MT

ATTORNEYS AT LAW

Table of Authorities

Cases

Halmes Livestock Company vs. Estate of William Russell Manger, 1998 MT 82N (1998)
Swandal Ranch Co. vs. Hunt, NO. 95-096 (1996)
Garrison vs. Lincoln County, 2003 MT 227; 317 Mont. 190; 77 P.3d 163 (2003)

Statutes

Montana Revised Code Annotated § 32-103 (1947)

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 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.

The Shooters, along with all of the other hunters, obtained permission by the Sociables to cross their land, the Lone Wolf Ranch, to access the Forest Service land more easily than the other route via public roads which was on the opposite side of the Forest Service land causing the hunters to drive an additional 40 miles to the location.

Two years ago, in order to formalize the agreement, the Shooters and the Lone Wolf Ranch drafted a hand written contract. It allowed that the Shooters and their friends access across the ranch to the Forest Service during hunting season. Everyone signed it and dated it. The Shooters also gave the Sociables a dollar bill to formalize the agreement.

A year later, Mr. Sociable died and Mrs. Sociable sold the Lone Wolf Ranch to Mr. and Mrs. Solitude. The Solitudes put up a gate and padlocked it shut so no one could access the road to the Forest Service land.

When the Sociables sold the property to the Solitudes, the Solitudes did acknowledge that the handwritten agreement was including in their documents when they closed the purchase on the ranch.

The Shooters pooled some money together with the other hunters and hired a lawyer. They filed a lawsuit in district court, contending that the Lone Wolf 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.

The Solitudes 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.

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

Arguments

ARGUMENT 1: The District Court did err in its decision that the Lone Wolf Ranch did not have to honor the previous agreement of the road for hunting access.

- A. According to Factual and Procedural History the Solitudes did acknowledge that the hand written agreement was included in their document when they closed the purchase on the ranch.
- B. In the case of Halmes Livestock Company vs. Estate of William Russell Manager, the Supreme Court of Montana set precedent when the court affirmed the fact that there was no part performance to remove the agreement from the statute of frauds. Also the defendants “did not hold a prescriptive easement over the subject because of the use of the decedent’s property was not hostile or adverse.”

This precedent had been set before the Friends of the Hunters vs The Lone Wolf Ranch case. The friends of the hunters are in a neighborly exchange with the Solitudes. It has already been set as an okay act in the pass and it should not be changed for the same circumstances.

ARGUMENT 2: The District Court did err that the hunting access road was not a public road.

- A. According to Montana Revised Code Annotated 32-103 (1947) required that a road “now traveled or used by the public” and “laid out or erected” was a “public highway.”

In the present case that is being discussed, the ranch road that crosses the Lone Wolf Ranch’s land to access the Forest Service land more easily was traveled by many people. As mentioned in the cases factual and procedural history, a witness said that the road had been used by the public since 1917.

This supports the fact that the road, which is traveled by many people, is a public road. Therefore, since the road is classified as a public road, the Solitudes do not have the right to say who can cross the ranch road.

- B. In the case Swandal Ranch Co. vs. Hunt, NO. 95-096 (1996), it was affirmed by the District Court of Montana that the road was public because it was used by many that showed maintenance records. Also, the defendant had not established a prescriptive easement making the road still accessible to the public.

The Friends of the Hunters’s county road foreman testified in their previous court. The foreman testified that the ranch road had been plowed by the County.

Included with the statement of the county foreman, the Friends of the Hunters produced a General Land Office Map showing the ranch road. The road was a County Road. Therefore, the road is a public, accessible road.

As in the Halmes Livestock Company vs. Manager Case, a prescriptive easement was not held, but just like in the Halmes Company vs. Manager Case, the decedent’s property was not abused.

Since the court affirmed that there was no performance to remove the agreement, the case concluded that the Livestock Company was acting in “neighborly exchange or accommodation.”

Conclusion

For the forgoing reasons, the decision of the Supreme Court should reverse the decisions of the lower courts.

Respectfully submitted this 16th day of March, 2010.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....1

STATEMENT OF THE ISSUES.....2

STATEMENT OF THE FACTS.....3

ARGUMENT.....4

 I. THE DISTRICT COURT DID ERR IN ITS DECISION THAT THE LONE
 WOLF RANCH DID NOT HAVE TO HONOR THE PREVIOUS AGREEMENT OF
 THE ROAD FOR HUNTING ACCESS.....4

 II. THE DISTRICT COURT DID ERR THAT THE HUNTING ACCESS ROAD
 WAS NOT A PUBLIC ROAD.....4

CONCLUSION.....5