



Collins (the "City") and the Poudre Valley Fire Protection District. The Authority operates a Training Center at 3400 West Vine Drive in Fort Collins, Colorado (the "Training Center"), which is adjacent to property owned by Defendant Mr. Gilmartin.

In 1991, Mr. Gilmartin, along with his parents, granted the City a perpetual easement and right-of-way across Mr. Gilmartin's property (the "Easement"), as described in the Deed of Easement attached as Exhibit B to the Amended Complaint (the "Deed of Easement"). The plain language of the Deed of Easement establishes that the Easement, which was granted to the City and includes the right to install "public improvements" such as a "street," is a public easement that extended the existing public street through the Gilmartin property to the Authority's training center. The public has been able to, and has accessed, the Easement from West Vine Drive for several years.

Since approximately 2010, Mr. Gilmartin has substantially and intentionally interfered with Plaintiffs' peaceful use and enjoyment of the Easement as described in detail in the Amended Complaint. Mr. Gilmartin's actions are not only contrary to Plaintiffs' rights under the Deed of Easement, but also pose a safety threat to those persons using the Easement. Plaintiffs assert claims for trespass and private nuisance against Mr. Gilmartin, and seek an Order from this Court declaring the scope of the Easement and enjoining Mr. Gilmartin from interfering with Plaintiffs' rights under the Easement.

#### **B. DEFENDANT'S STATEMENT OF DEFENSES**

### **II. PROPOSED STIPULATED FACTS<sup>2</sup>**

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<sup>2</sup> These are "Proposed" Stipulated Facts because Mr. Gilmartin has not provided Plaintiffs with his position on the Stipulated Facts.

The following facts are undisputed:

1. The City is a municipal corporation organized under the laws of the State of Colorado.
2. The Authority is a public entity formed in 1981 by an Intergovernmental Agreement between the City and the Poudre Valley Fire Protection District to provide fire and emergency services to the citizens and their property within Plaintiffs' jurisdictional boundaries. The Intergovernmental Agreement was amended and restated on November 3, 1987, and again on July 15, 2014 ("2014 IGA"). A copy of the 2014 IGA is attached as Exhibit A to the Amended Complaint.
3. Mr. Gilmartin is an individual who resides at 3316 West Vine Drive, Fort Collins, Colorado 80521 ("Gilmartin Property").
4. The Authority operates a Training Center located at 3400 West Vine Drive in Fort Collins, Colorado ("Training Center").
5. On January 15, 1991, Mr. Gilmartin and his parents, in exchange for the sum of \$4,669.00, granted, sold, and conveyed to the City and its successors and assigns the Easement as described in the Deed of Easement attached as Exhibit B to the Amended Complaint.
6. The property on which the Training Center sits is the property benefited by the Easement.
7. In or about 1995, a concrete surface was installed on Easement connecting the end of West Vine Drive to the Training Center grounds.

### **III. PRETRIAL MOTIONS**

#### **A. PENDING MOTIONS**

Plaintiffs' Motion for Partial Summary Judgment is pending.

#### **B. ANTICIPATED MOTIONS**

None at this time.

### **IV. TRIAL BRIEFS**

The parties will not be filing pretrial briefs unless otherwise directed by the Court. The parties anticipate submitting post-trial proposed written findings of fact and conclusions of law.<sup>3</sup>

### **V. ITEMIZATION OF DAMAGES OR OTHER RELIEF SOUGHT**

#### **A. PLAINTIFFS:**

Plaintiffs are not seeking damages in this action. Plaintiffs seek an Order declaring that (1) the Easement is a public easement for use by the public as authorized by the City; (2) that Plaintiffs and their respective directors, officers, employees, volunteers, agents, guests, and invitees may use the Easement free from interference from Mr. Gilmartin for all uses that a public roadway may be used as authorized by the City, including but not limited to, ingress to and egress from the Training Center and parking vehicles within the Easement; and (3) any further interference by Mr. Gilmartin with Plaintiffs' rights under the Deed of Easement will constitute trespass and private nuisance. Plaintiffs further ask the Court to permanently enjoin Mr. Gilmartin, at all times on all days, from interfering with Plaintiffs' rights under the Deed of Easement, including but not limited to, enjoining Mr. Gilmartin from: (1) interfering with any person using the Easement; (2) placing anything whatsoever within the Easement; (3) placing

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<sup>3</sup> This is Plaintiffs' position. Mr. Gilmartin has not provided his position on this section.

any sign, barrier or other object that interferes with the use and enjoyment of the Easement; (4) engaging in threatening, intimidating or harassing behavior directed at people using the Easement, such as shouting, cursing or making threatening gestures; and (5) encouraging, inciting, or securing other persons to interfere with Plaintiffs' rights under the Deed of Easement;

**B. DEFENDANT:**

**VI. IDENTIFICATION OF WITNESSES AND EXHIBITS<sup>4</sup>**

**A. WITNESSES:**

- i. Plaintiffs: *See* Exhibit 1 attached hereto.
- ii. Defendant:

**B. EXHIBITS:**

- i. Plaintiffs: *See* Exhibit 2 attached hereto.
- ii. Defendant:

**C. JUROR NOTEBOOKS**

Not applicable.

**D. DEPOSITION AND OTHER PRESERVED TESTIMONY**

The parties have not designated any deposition or other preserved testimony, but expressly reserve and stipulate to the use of any deposition testimony for impeachment purposes at trial.

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<sup>4</sup> As of the time of filing, Mr. Gilmartin has not provided undersigned counsel his witness and exhibit lists.

## VII. TRIAL EFFICIENCIES

This matter has been set for a two-day trial to the Court. Plaintiffs continue to believe that two days is appropriate. The parties have considered ways in which the use of technology can simplify the case and make it more understandable.

Respectfully submitted this 19th day of July, 2017.

IRELAND STAPLETON PRYOR & PASCOE, PC

Signed original on file at the office of  
Ireland Stapleton Pryor & Pascoe, PC

/s/ Kelley B. Duke

Kelley B. Duke, #35168

Benjamin J. Larson, #42540

*Attorneys for City of Fort Collins and  
Poudre Fire Authority*

## **TRIAL MANAGEMENT ORDER**

**IT IS HEREBY ORDERED** that the foregoing, including the following modifications made by the Court, is and shall be the Trial Management Order in this case:

1. A final pretrial conference was conducted before the Court on July 20, 2017.
2. Defendant Gilmartin appeared at the final pretrial conference and has filed with the Court “Defendants Statements Proposed Stipulated Trial Management Order.” The Court accepts Defendant Gilmartin’s statement as his statement of defenses to the claims asserted by Plaintiff.
3. Defendant Gilmartin has been ordered to disclose all witnesses and exhibits he intends to call or use at trial not later than July 24, 2017. The Court instructed Mr. Gilmartin that witnesses and exhibits that are not disclosed by this extended deadline will not be allowed.
4. Defendant Gilmartin raised concerns regarding his ability to proceed to trial as scheduled and that he was contemplating filing a motion to continue the trial presently scheduled for August 14-15, 2017. Defendant Gilmartin was specifically ordered to file any such motion by July 27, 2017 with any supporting authority and documentation.

Approved this 22<sup>nd</sup> day of July, 2017.

BY THE COURT



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District Court Judge

