

District Court, Larimer County, Colorado 201 Laporte Avenue, Suite 100 Fort Collins, Colorado 80521-2761 (970) 498-6100	DATE FILED: August 4, 2017 8:13 AM CASE NUMBER: 2016CV31096
Plaintiffs: City of Fort Collins, a Colorado municipal corporation; and Poudre Fire Authority, a Colorado public entity, v. Defendant: Keith Gilmartin, an individual	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> Case Number: 2016CV31096 Courtroom: 3C
ORDER REGARDING MOTION FOR PARTIAL SUMMARY JUDGMENT	

THIS MATTER comes before the Court on Plaintiffs City of Fort Collins and Poudre Fire Authority’s (hereinafter “Plaintiffs”) Motion for Partial Summary Judgment. Having reviewed the motion, the supporting affidavits and exhibits, Defendant Gilmartin’s response, and being fully otherwise fully advised in the premises, the Court enters the following Order:

Procedural History

Plaintiffs commenced the present action asserting claims for trespass, public nuisance, and for a declaratory judgment regarding its use of a perpetual easement and right-of-way granted to the City of Fort Collins by Hubert J. Gilmartin, Florence R. Gilmartin, and Defendant Keith Gilmartin through and under the Gilmartin Property. [Amended Complaint, ¶8]. The easement provides access to the Poudre Fire Authority Training Center located at 3400 West Vine Drive in Fort Collins, Colorado. Plaintiffs claim that from the time the easement was granted through approximately 2010, Poudre Fire Authority enjoyed use of the Easement without interference from the Defendant Mr. Gilmartin. Commencing in 2010, Poudre Fire Authority claims that Defendant Gilmartin has substantially interfered with Poudre Fire Authority’s peaceful use and enjoyment of

the Easement. Plaintiffs further request that the Court declare the rights of the Plaintiffs with regard to the Deed of Easement and in particular declare that (a) the easement is a “public easement” for use by the public as authorized by the City of Fort Collins; (b) that Plaintiffs and their directors, officers, employees, volunteers, agents, guests, and invitees may use the Easement from Defendant Gilmartin “for all purposes set forth in the Deed of Easement, including but not limited to, ingress to and egress from the Training Center, parking vehicles...”

On May 15, 2017, Plaintiffs filed their motion for partial summary judgment. Plaintiffs argue that based upon the material undisputed facts, the Court should determine, as a matter of law, that the Deed of Easement conferred a “public easement” for use by the public as authorized by the City. Plaintiffs argue that “When an easement is accepted by a local government and is then used by the public, it becomes a roadway and open to use by members of the public. Citing *Turnbaugh v. Chapman*, 68 P.3d 570, 573 (Colo.App. 2003). Plaintiffs further argue that “once a roadway is accepted by a local government and used by the public, its status as a roadway continues until vacation or abandonment.

Statement of Material Undisputed Facts

Based upon the Plaintiffs’ submission, the Court finds the following are material, undisputed facts:

1. 1. The City is a municipal corporation organized under the laws of the State of Colorado. Fort Collins Charter Art. I, § 1.1
2. Poudre Fire 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. Exhibit A, July 15, 2014, Amended and Restated Intergovernmental Agreement Establishing Poudre Fire Authority, § 1.2 ("2014 IGA").

3. Defendant Gilmartin is an individual who resides at 3316 West Vine Drive, Fort Collins, Colorado 80521 ("Gilmartin Property").

4. Poudre Fire Authority operates a Training Center located at 3400 West Vine Drive in Fort Collins, Colorado ("Training Center") west of the Gilmartin property.

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 a public easement (the "Easement") described as follows:

“a perpetual easement and right-of-way to install, operate, maintain, repair, reconstruct, replace, inspect and remove, at any time and from time to time public improvements (including without limitation, street, utilities, sidewalk and drainage), together with a right-of-way for access on, along, through and under the [Gilmartin Property].”

6. Pursuant to the 2014 IGA and an October 12, 2016, Intergovernmental Agreement entered into by and between the City and the Authority ("Delegation of Duties"), the Authority has the power, duty, and responsibility to maintain, operate, manage, control, and assert all rights under and pursuant to the Easement.

7. West Vine Drive is a public street that dead ends on the Gilmartin Property. Ex. B, DeMint Aff. ¶ 4.

8. The Easement extends a right-of-way for access from West Vine Drive through the Gilmartin Property to the Poudre Fire Authority Training Center.

9. In or about 1995, pursuant to the express language in the Deed of Easement, the City installed a paved street on the Easement from West Vine Drive to the Training Center. Ex. B, DeMint Aff. ¶ 6. The public has been able to, and has accessed, the Easement from West Vine Drive for several years. Ex. B, DeMint Aff. ¶ 6.

10. From when the Easement was granted in 1991 through approximately 2010, Plaintiffs enjoyed use of the Easement without interference by Mr. Gilmartin or his parents.

Ex. B, DeMint Aff. ¶ 8. However, beginning in approximately 2010, the City alleges that Mr. Gilmartin has interfered with Plaintiffs' peaceful use and enjoyment of the Easement. *Id.*

Plaintiff's Motion for Partial Summary Judgment

On May 15, 2017, Plaintiffs filed the Motion for Partial Summary Judgment now under consideration. Plaintiffs urge the Court to enter an Order granting partial summary judgment in favor of Plaintiffs and against Defendant Gilmartin on Plaintiffs' Third Claim for Relief seeking a Declaratory Judgment. The City specifically requests that the Court determine, as a matter of law, 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.

Defendant Gilmartin opposes the Plaintiffs' motion for partial summary judgment. Although Defendant Gilmartin does not provide a statement of facts or provide an affidavit to contest the statement of undisputed facts supporting the motion, Defendant Gilmartin disputes the allegation that West Vine Drive was "extended" by virtue of the paving and installation of certain improvements by the City. Defendant Gilmartin further argues that there has been no "street dedication" for the easement. Further, Defendant Gilmartin disputes Plaintiffs' claim that he has improperly interfered with the City's use of the easement.¹

¹ This is not relevant to the City's motion for partial summary judgment and is not considered in the Court's ruling on the subject motion. This issue will be reserved and determined at trial.

Summary Judgment Standard

Summary judgment is appropriate if “there is no genuine issue as to any material fact” and “the moving party is entitled to a judgment as a matter of law.” C.R.C.P. 56(c). Summary judgment is a “drastic remedy,” which requires the Court to resolve all doubts as to whether a disputed fact exists against the moving party, and which requires the Court to afford the nonmoving party the benefit of all favorable inferences which may reasonably be drawn from the undisputed facts. Greenwood Trust Co. v. Conley, 938 P.2d 1141, 1149 (Colo. 1997). The moving party bears the initial burden to show that no genuine issue of material fact exists. *Id.* If the moving party carries this burden, the burden shifts to the nonmoving party to establish that there is a triable issue of fact. *Id.*

Law and Analysis

Here, Plaintiffs request the Court determine that the Deed of Easement grants the City “all uses that a public roadway may be used as authorized by the City.” In support of its position, the City relies upon the holding in *Turnbaugh v. Chapman*, 68 P.3d 570 (Colo.App. 2003), which provides that “once a roadway is accepted by the public, its status as a roadway continues until vacation or abandonment.” *Id.* at 572. The Court has carefully reviewed the holding in *Turnbaugh* and believes that the holding in that case is distinguishable from the present circumstance. In *Turnbaugh*, the owner of certain property subdivided the property and a plat for the subdivision was approved by Douglas County. The plat specifically identified a strip of land accompanied by text in the plat indicating the strip of land was “reserved for future access easement.” The subdivision plat was approved and accepted by Douglas County subject to the condition that the County would undertake maintenance of the designated roads only after construction had been satisfactorily completed by the subdivider. The Court determined that the reservation of easement was properly dedicated to a public use by the owner and that the County properly accepted the

property by approving the plat. Accordingly, the Court held that the roadway was properly accepted by the public and its status as a public roadway would continue until vacation or abandonment.

Based upon the undisputed facts recognized by the Court, it is unclear to the Court that the Deed of Easement was intended to create a public roadway “for all uses that a public roadway may be used as authorized by the City” as opposed to simply providing an easement for public access to the Training Facility. Furthermore, it is unclear from the facts underlying Plaintiffs’ motion that the easement has been “dedicated” as a public roadway or accepted by the City as a public roadway as would appear to be required under C.R.S. §31-23-107. Accordingly, the Court denies the Plaintiffs’ motion for partial summary judgment to the extent that Plaintiffs argue that the Deed of Easement grants to the City an easement for all uses for which a “public roadway” may be used as authorized by the City. This issue will have to be determined at trial.

Order

Based upon the undisputed facts, the Court does, however, grant the City’s motion for partial summary judgment, and orders as follows:

- (1) The Deed of Easement is a public easement for establishing a right-of-way for access to the Poudre Fire Authority Training Facility;
- (2) Plaintiffs City of Fort Collins and Poudre Fire Authority, their respective directors, officers, employees, volunteers, agents, guests, and invitees may use the Easement for ingress and egress to the Poudre Fire Authority Training Facility.
- (3) Any further interference by Defendant Gilmartin with Plaintiffs' right of access under the Deed of Easement will constitute trespass and private nuisance.

SO ORDERED this 3rd day of August 2017.



BY THE COURT:

STEPHEN JOUARD
District Court Judge