

Defendant Keith Gilmartin's ("Gilmartin") July 25, 2017 "Motion for Clarification" and state as follows in support thereof:

PROCEDURAL DEFICIENCIES

Before addressing the substance of Gilmartin's Motion for Clarification, Plaintiffs initially note that Gilmartin's motion was filed in violation of both C.R.C.P. 121 § 1-15(8) and C.R.C.P. 5(a). Gilmartin did not confer with Plaintiffs before filing his motion. Although the motion includes a certificate of service, which claims that service of the motion was effectuated by U.S. Mail and email on Plaintiffs' attorneys, Plaintiffs have not been served with the motion as of the filing of this response.¹ Either of these technical deficiencies provides an independent basis for denying Gilmartin's Motion for Clarification without addressing any of the issues raised therein.

RESPONSE IN OPPOSITION

It is difficult to determine what relief Gilmartin is asking for in his Motion for Clarification, but he appears to request this Court to issue an advisory ruling as to whether a preliminary finding from a separate action involving different facts and other real property might be carried forward into this action.

In the prior action now referenced by Gilmartin, the Court ruled in a preliminary order that Mr. Gilmartin prevented "access" to Colorado State University's ("CSU") real property by erecting "t-posts" and yellow caution tape surrounding CSU's driveway. *See generally* Ex. 1 to Motion for Clarification. The Court ruled that the yellow caution tape constituted a knowing

¹ Plaintiffs only learned of Gilmartin's Motion for Clarification by reviewing the docket as a matter of course, which it has now begun to do regularly in light of Gilmartin's repeated failure to comply with C.R.C.P. 5 throughout this action.

violation of the preliminary injunction in that case and found Gilmartin in contempt. The Court also expanded its original preliminary injunction to require Gilmartin to remove the t-posts because they prevented larger trucks from lawfully accessing the CSU property.

Although this preliminary ruling confirms the general notion that t-posts, caution tape, and other unauthorized impediments prevent lawful “access” to a property, this non-final, interim order on different facts is not applicable to this case. *Cf. Pomeroy v. Waitkus*, 517 P.2d 396, 399 (Colo. 1973) (explaining that “collateral estoppel” or “issue preclusion” only applies to “the final decision of a court on an issue actually litigated and determined”). The Plaintiffs here were not parties to this prior suit, and the easement at issue in this case relates to different real property than the prior access dispute between Gilmartin and CSU.

CONCLUSION

The present action should be resolved solely on the facts and issues before the Court. Gilmartin’s Motion for Clarification should be denied.

Respectfully submitted this 7th day of August, 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

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

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of August, 2017, a true and correct copy of the foregoing **PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR CLARIFICATION** was served via U.S. Postal Service, first class mail, postage prepaid and addressed as follows:

Keith Gilmartin
3316 W. Vine Drive
Fort Collins, CO 80521

And served via email to:
keithgil2@gmail.com

*SIGNED ORIGINAL ON FILE AT THE OFFICE OF
IRELAND STAPLETON PRYOR & PASCOE, PC*

/s/ Barbara Biondolillo

Barbara Biondolillo