

COPY

The Honorable Palmer Robinson
Hearing Date: September 8, 2000
Hearing Time: 10:45 a.m.
Room W-1039

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

KING COUNTY, a political subdivision of the
State of Washington,

No. 00-2-14946-8 SEA

Plaintiff,

KING COUNTY'S MOTION FOR
PRELIMINARY INJUNCTION AND BRIEF
IN SUPPORT THEREOF

v.

JOHN RASMUSSEN, and NANCY
RASMUSSEN, husband and wife, and their
marital community
Defendants.

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KING COUNTY SHERIFF

I. RELIEF REQUESTED

King County moves for issuance of a preliminary injunction requiring the defendants to cease all obstruction, including threats, intimidation, physical force, and barriers of any sort, to King County's access, use, and enjoyment of the 100' rail corridor that runs through the defendants' residential property.

II. STATEMENT OF FACTS

A. King County's Real Property

By deed dated May 9, 1882, Bill Hilchkanum and his wife conveyed to the Seattle Lake

1 Shore and Eastern Railway Company (the "Railway"), a continuous 100' wide strip of land, over
2 one mile long, running along the shore of East Lake Sammamish. Declaration of Neil Degoojer at
3 ¶ 11-12. The Hilchkanum deed conveyed this strip of land from at least what is now 1241 E. Lake
4 Sammamish Shore Ln. SE to 1913 E. Lake Sammamish Pl. SE. *Id.* at 12. Therefore, the
5 Hilchkanum deed conveyed to the Railway a 100' wide strip of land (the "subject property")
6 through what is now the defendants' residential property, located at 1605 E. Lake Sammamish
7 Place SE. *Id.* at ¶ 13. The subject property is one segment of the East Lake Sammamish rail
8 corridor. *Id.* at 18.

10
11 Commonwealth Land Title Insurance Company verified that Burlington Northern was the
12 successor in interest to the subject property conveyed by the Hilchkanums to the Railway. *Id.* at
13 ¶¶ 14-16 and Exhibit 1. In early 1997, Burlington Northern sold the ELS corridor, including the
14 subject property, to The Land Conservancy of Seattle and King County (TLC). *Id.* at ¶ 17 and
15 Exhibit 2.

16
17 On September 18, 1998, the United States Surface Transportation Board approved the ELS
18 corridor, including the subject property, for railbanking. Declaration of Scott D. Johnson at ¶ 3 and
19 Exhibit 1. This ruling authorized rail salvage (removal of the rails, ties, and spikes), and conversion
20 of the ELS corridor, including the subject property, into a recreational trail, as a means of preserving
21 this land for future rail use. *Id.* at ¶ 4. King County then purchased approximately 11 miles of the
22 ELS corridor from TLC, including the subject property. Johnson Decl. at ¶ 5 and Degoojer Decl.
23 at ¶ 18.

24
25 King County is the successor in interest to the Railway, and holds title to the subject
property. Degoojer Decl. at ¶ 19. King County is obligated to preserve the legal and physical

1 integrity of the corridor, including the subject property, for future railroad use. Johnson Decl. at ¶
2 5.

3 **B. John Rasmussen's Threats And Intimidation**

4
5 Beginning in late 1998, or early 1999, County staff learned that the defendants John
6 Rasmussen and Nancy Rasmussen had threatened that John Rasmussen would resort to violence to
7 eject County staff from the subject property. Jennifer Knauer, a former County Project Manager
8 for the East lake Sammamish Trail, first heard of these threats from a co-worker, Lori Hoover,
9 who met and spoke with Nancy Rasmussen by chance. Declaration of Jennifer Knauer at ¶¶ 5 and
10 6. Ms. Hoover had been out at a local church while looking for a possible meeting room, where
11 she met Nancy Rasmussen. *Id.* Lori came back to the office very shaken because Nancy
12 Rasmussen threatened that her husband would become violent against County employees on the
13 corridor, that he was extremely upset about the planned trail, and that his behavior was ruining
14 their marriage. *Id.*

15
16
17 At the subsequent public meeting, Ms. Knauer met Nancy Rasmussen personally. Ms.
18 Rasmussen introduced herself and told Ms. Knauer that her husband, John Rasmussen, was very
19 irrational and upset about the planned trail, and advised that the County should avoid a
20 confrontation with him. *Id.* at ¶ 7.

21
22 Because of Ms. Rasmussens' warnings, Ms. Knauer was concerned for her safety, and the
23 safety of other County employees when on the corridor near the Rasmussens' home. *Id.* at ¶ 8.
24 Therefore, the King County Parks System ("Parks") instituted an informal safety policy -- Parks
25 staff never entered the corridor alone near the Rasmussen residence, and always carried a cellular
telephone in case of an emergency. *Id.* at ¶¶ 9 and 10. Parks also made certain that a King County

1 sheriff's deputy was present during all other public meetings regarding the trail project. *Id.* at ¶ 11.

2 At one such later public meeting, Ms. Knauer again spoke with Nancy Rasmussen. *Id.* at ¶
3 12. Again, Ms. Rasmussen warned that her husband does not like strangers on the corridor. *Id.* at
4 ¶ 13. She stated that she was worried that her husband would become violent. *Id.* Further, rail
5 salvager Rick Spence also reported that John Rasmussen had confronted him and his workers on
6 the corridor. *Id.* at ¶ 14.

8 Mr. Rasmussen slowly escalated his threats to County staff, via e-mail. On April 8th and
9 9th, 1999, John Rasmussen threatened to have County officials and others arrested if they set foot
10 on the subject property. Johnson Decl. at Exhibit 2, p. 12. Next, on June 21, 1999, via e-mail to
11 King County Executive Ron Sims and copied to the members of the King County Council, and the
12 press, John Rasmussen threatened to block County employees from the subject property. *Id.* at p.
13 17.

15 On August 2, 1999, via an e-mail to King County Deputy Prosecuting Attorney David
16 Eldred, Defendant John Rasmussen warned:

18 I've told you in the past, and I repeat it now, do not step foot on my reversionary property
19 for the purpose of a trail without paying compensation or providing an acceptable
20 explanation for your actions....This applies to you and any other County employee. This is
going to get very ugly if you try to take my land in violation of the law.

21 *Id.* at p. 25 (emphasis supplied).

22 On August 11, 1999, via an e-mail to King County Sheriff Dave Reichert, and copied to
23 Executive Sims, the Council, and press, John Rasmussen warned:

24 I've repeatedly notified the County to stay off my land for purposes of the trail, or to justify
25 their actions to me....I don't want to get into a fight, but I'll defend my property against
illegal confiscation by whatever force I can muster.

1 Id. at p. 26 (emphasis supplied).

2 Then, on November 29, 1999, via e-mail to Cheryl Fambles, Director of the King County
3 Department of Construction and Facilities Management, and copied to members of the Council,
4 and press, John Rasmussen blatantly threatened:
5

6 I warn you again. Do not step foot on my reversionary property until you pay
7 compensation for the taking, as required by law. If your employees decide to enter my
8 property, I will assume they are there for illegal purposes and use whatever force is
9 necessary to protect myself, and eject them.... There is no longer any compromise or
10 goodwill left.

11 Id. at p. 30 (emphasis supplied).

12 On January 23, 2000, John Rasmussen again wrote to Sheriff Reichert, and warned of a
13 physical confrontation on the subject property:

14 The County continues to illegally invade my property, and the time comes closer that
15 someone will be physically harmed over this issue. I believe that person most likely will
16 be me, as I defend my property rights.

17 Id. at p. 39.

18 Then, on August 9, 2000, via e-mail to Councilmember David Irons, John
19 Rasmussen escalated his threats further, repeatedly stating that he will use a firearm against
20 County employees who enter the subject property:

21 Now, I feel my only option is to defend my rights and my property with a gun. There is a
22 limit to my patience, and I have exceeded that limit several times over while waiting for a
23 very sick King County government to do its duty. King County has totally failed in its
24 responsibility to the residents along ELS.

25 David, I wrote to you on the Forth of July to explain my decision to stand up against the
corruption of this County. We talked by phone on July 6th, and I assured you that I would
give adequate notice to the County before I meet trespassers with a loaded shotgun. Then,
I wrote you a note on July 10th to explain I was working on a letter that updates and
restates the problems. This is that letter.

1 If you are willing to represent my rights before King County government, please give me a
2 timetable for you to deal with the concerns I express here. Otherwise, I'll give 72 hours
3 notice and begin to meet trespassers from the County with a loaded shotgun. I will remove
4 them from my property with whatever force is required. I will use the shotgun to defend
5 my life and my property. For fifteen months I have asked trespassing County employees to
6 depart my property. I've repeatedly notified County government, in writing, to stay off my
7 property. The County has continued to send these trespassers while totally ignoring my
8 rights. It is obvious to me that the County is using the excuse of the federal railbanking act
9 to take adverse possession of my land. That action is illegal. Now, more aggressive
10 actions are justified. In light of my repeated attempts to resolve the issues over a period of
11 fifteen months, the County leadership bears the responsibility for this more dangerous
12 situation.

13 ***

14 If nothing happens from this letter, I'll give 72 hours notice to everyone I've ever written
15 over the last fifteen months and then meet any trespassers on my property with a loaded
16 shotgun. I will demand they prove to me their right to be there, or I will use whatever
17 force is necessary to remove them. I will not allow the County to steal my property by
18 adverse possession, fraud and direct violation of the laws and Constitution of the State of
19 Washington.

20 *Id.* at pp. 1-2 and 10 (emphasis supplied).

21 Because of these most recent threats, Parks has prohibited its employees from entering the
22 corridor near defendants' the residence, in order to protect its employees' safety. Declaration of
23 Shelley Marelli at ¶¶ 8-11. Because of Mr. Rasmussen's threats, County employees have been
24 unable to conduct maintenance or other activities along the corridor near the subject property. *Id.*
25 at ¶ 12. King County will be unable to meet its maintenance obligations near the subject property
until John Rasmussen is enjoined from threatening County staff or interfering with the County's
access to the subject property. *Id.* at ¶¶ 13-14.

1
2 **IV. ISSUE TO BE DETERMINED**

3 Whether King County has demonstrated:

- 4 (1) a clear legal or equitable right;
- 5 (2) a well-grounded fear of immediate invasion of that right; and
- 6 (3) that acts complained of have or will result in actual and substantial injury.
- 7

8
9 **V. AUTHORITY**

10 Injunctive relief is appropriate where the moving party shows: (1) a clear legal or equitable
11 right; (2) a well-grounded fear of immediate invasion of that right; and (3) that the acts complained
12 of have or will result in actual and substantial injury. Rabon v. City of Seattle, 135 Wn.2d 278, 284,
13 957 P.2d 621 (1998) (citing Tyler Pipe Indus., Inc. v. Department of Revenue, 96 Wn.2d 785, 792,
14 638 P.2d 1213 (1982)). The granting of a preliminary injunction is addressed to the sound discretion
15 of the trial court. Brown v. Voss, 105 Wn.2d 366, 372-373, 715 P.2d 514 (1986) (citations omitted).
16 In addition, the trial court has broad discretionary authority to “shape injunctive relief to fit the
17 particular facts, circumstances, and equities of the case before it.” Id.

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21 **A. CLEAR LEGAL RIGHT**

22 In order to establish a clear legal or equitable right, the court examines the likelihood that the
23 moving party will prevail on the merits. Rabon at 285. The court must reach the merits of the purely
24 legal issues in order to make that determination, but it should not adjudicate the ultimate merits of the
25 case. Id. at 286.

1 The interpretation of a deed to determine its effect is a mixed question of law and fact.
2 Veach v. Culp, 92 Wn.2d 570, 573, 599 P.2d 526 (1979). The intent of the parties is a factual
3 question with the legal consequence of that intent dictated by the rules of law. Id.
4

5 If a deed conveys a definite strip of land and contains no language limiting the purpose of
6 the conveyance, the deed conveys a fee simple interest in the strip of land regardless of the caption
7 of the deed. Brown v. State, 130 Wn.2d 430, 439-440 and 444 (citations omitted). To convey a
8 conditional or reversionary estate, the words in the deed must clearly and expressly indicate such
9 an intent. Brown at 438 (citing King County v. Hanson Inv. Co., 34 Wn.2d 112, 208 P.2d 113
10 (1949)).
11

12 In Brown, one of the deeds at issue - the "Simpson deed" - was a conveyance from a
13 landowner to a railroad, and was captioned "Right of Way Deed". Brown at 444. The Simpson
14 deed described a strip of land, but did not expressly convey fee title. Id. Because, the purpose of
15 the conveyance was not limited, the Court found that the deed conveyed fee simple title regardless
16 of the caption. Id.
17

18 In the case at bar, the intent of the parties to the Hilchkanum deed is similarly made clear
19 by the deed itself. The deed describes a strip of land by defining its boundaries in terms of the
20 centerline. The centerline is described with particularity in terms of metes and bounds. There are
21 no words expressly limiting the estate conveyed. In fact, the deed grants the interest conveyed to
22 the grantee's successor and assigns forever without limitation. Moreover, the deed contains no
23 reversionary clause of any kind.
24

25 Although the court should not reach the ultimate merits of the case, the County is likely to
establish that it holds a fee simple estate in the subject property. Given the wording of the deed and

1 the Supreme Court's holding in Brown, the County has the right to enter onto the premises and
2 conduct activities consistent with its ownership interest. There is no justification, legal or otherwise,
3 for Mr. Rasmussen's invasion of this right.

4
5 Further, Mr. Rasmussen asserted in his e-mails that the Hilchkanum deed conveyed a railroad
6 easement.¹ Assuming arguendo that the defendants will prevail at trial with this assertion, and
7 establish that they are the owners of the subject property (and not merely the adjacent property) the
8 County would still be entitled to use the subject property free from interference.² See Veatch v.
9 Culp, 92 Wn.2d 570, 575, 599 P.2d 526 (1979). Federal law prevents railroad easements from
10 dissolving as a result of railbanking and interim trail use. See 16 U.S.C. 1247(d).³ As the holder of
11 an easement, King County would have a common law right to maintain the easement; King County
12

13
14 ¹ John Rasmussen claims that he and his wife own a reversionary fee simple estate to the subject
15 property, that King County must pay them compensation before entering or using the subject
16 property, and that the Hilchkanum deed only conveyed an easement to the Railway. Johnson
17 Decl., Exhibit 2 at pp. 11-12, 18-20 and 29.

18 ² Mr. Rasmussen's assertions that the County must compensate him for the prevention of the
19 subject property "reverting" to him is not an issue here and does not prevent the County from
20 exercising its right to access the property even if it merely holds an easement by virtue of the
21 Hilchkanum deed. King County has paid TLC for the property interest it received and, thus, paid
22 just compensation to the owner thereof. Federal law prevents "reversion" of property which is
23 subject to a railroad easement as a result of railbanking. See footnote 3 below. If King County's
24 predecessors held a railroad easement which allows access and use of the subject property free
25 from interference, so does King County. Therefore, whether or not King County or any other
government should pay just compensation to Mr. Rasmussen is inapposite to the issue of whether
King County can access the subject property free from interference by Mr. Rasmussen. Further,
even if the defendants are entitled to compensation, their relief is recovery of damages from the
federal government under the Tucker Act. See Preseault v. I.C.C., 494 U.S. 1 (1990).

³ "...in the case of interim use of any established railroad rights-of-way pursuant to donation,
transfer, lease, sale, or otherwise in a manner consistent with this chapter, if such interim use is
subject to restoration or reconstruction for railroad purposes, such interim use shall not be treated,
for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for
railroad purposes." 16 U.S.C. 1247(d). See also, Preseault v. ICC, 494 U.S. 1, 8-10 (1990).

1 would also have a duty to maintain the easement in a safe condition. See e.g., Rivett v. Tacoma, 123
2 Wn.2d 573, 582, 870 P.2d 299 (1994) (holding that a municipality has a duty to maintain a right-of-
3 way in a safe condition); Dreger v. Sullivan, 46 Wn.2d 36, 278 P.2d 647 (owner of easement by
4 implied grant has burden of making any necessary improvements to the way); Hughes v. Boyer, 5
5 Wn.2d 81, 104 P.2d 760 (1940) (owners of easement have the right to re-grade easement across land
6 of owners of the servient tenement without any express grant from the owners of the servient
7 tenement).
8

9 Therefore, King County retains all the rights granted to its predecessors. King County has a
10 legal right to access the subject property, to conduct maintenance, and to develop a recreation trail,
11 while preserving the corridor for future rail use.
12

13
14 **B. Well-Founded Fear of Invasion**

15 Mr. Rasmussen's repeated threats demonstrate his intent to invade the County's right to enter
16 onto the subject property. Mr. Rasmussen's words, and his wife's repeated warnings about Mr.
17 Rasmussen's willingness to use force, establish a well-founded fear of invasion. The court does not
18 need to wait until Mr. Rasmussen injures a County employee before imposing a preliminary
19 injunction.
20
21
22
23

24 **C. Mr. Rasmussen's Continued Threats Have and Will Result in Actual and Substantial
25 Injury**

As a result of Mr. Rasmussen's threats, the County is unable to safely conduct maintenance

1 and trail development activities in the area of Defendants' residence. The County has already been
2 injured because of its lack of access and Mr. Rasmussen's actions will continue to result in actual
3 and substantial injury until he ceases obstructing access to the subject property by threatening to
4 harm County employees who come onto the property or obstructing access by any other means.
5

6
7 **IV. CONCLUSION**

8 King County is likely to prove at trial that it has a clear legal right to access the subject
9 property free from obstruction by defendants. Mr. Rasmussen's threats have invaded that right.
10 The County has, and will continue, to experience actual and substantial injury as a result of the
11 Defendants' threats.
12

13 Therefore, the County respectfully asks the court for a preliminary injunction. A copy of a
14 proposed preliminary injunction is attached for the Court's benefit.
15

16 DATED this 31ST day of August, 2000.
17

18 NORM MALENG
19 King County Prosecuting Attorney

20
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