IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CALVIN W. KNORR and DONNA M. KNORR, Plaintiffs,	:	CV- 16-1232
vs.	:	CIVIL ACTION
AARON A. CLEMENT and TRACY E. HEISER, Defendants.	:	INJUNCTION

OPINION AND ORDER

This matter comes before the court on Plaintiffs' motion for preliminary injunction. Following a hearing, the motion for preliminary injunction is denied. This opinion and Order follow.

BACKGROUND & FINDINGS OF FACT[1]

The parties are neighbors owning and residing on contiguous properties on Blockhouse Road in Jackson Township, Lycoming County. A right of way exists over the Defendants' property as a means of ingress and egress to the Plaintiffs' (Knorrs') property. Alternate access to the Knorr's property exists. The right of way is approximately 15 feet wide. Animosity exists between the parties related to the right of way, particularly as to speed, drainage ditches, and parking. The Defendants' residence is located very close to the right of way.

On occasion, Defendants or their guests have parked on the right of way. Except for very few occasions, such parking has been temporary for loading and unloading. When asked to move a parked vehicle out of the right of way, the Defendants have always complied. However, on one occasion, in March of 2016, Calvin Knorr knocked on the door to request that a parked vehicle be moved, but no one answered the door. Instead, the alternate route was used. On another occasion, Defendants parked the vehicle for a longer period of time. This occurred in February 2016 when the roadway was a sheet of ice. There were allegations that the Defendants

[1] The Court notes that it did not have the benefit of transcripts at the time of this opinion.

parked on the road when they had visitors for a two week period because those visitors brought an RV. However, the Court found the testimony credible that Defendants did not park on the right of way during that time period because they had sufficient parking to accommodate all of their vehicles.

In spring of 2016, Defendants put in small drainage ditches on the right of way to control the water flow around their residence and property. Prior to the drainage ditches, the right of way provided a relatively smooth ride. Plaintiffs complain that the ride is now bumpy and uncomfortable. The Court finds, however that the drainage ditches do not prevent travel or unreasonable interfere with the travel over the road. The Court finds credible the testimony that there is no trouble traveling 5 to 15 mph over the ditches. The pictures reveal that the "ditches" are very small and hardly noticeable in the pictures.

DISCUSSION

Plaintiffs seek a preliminary mandatory injunction to remove the drainage ditches from the right of way and prohibit Defendants from parking on the roadway.[2] At issue is whether Defendants have unreasonably interfered with Plaintiffs' use of the right of way by installing drain ditches and by periodically parking vehicles on the roadway. The Court concludes that the Defendants have not unreasonably interfered with the Plaintiffs use of the roadway. Therefore, the request for an injunction is denied.

It is well settled law that the owner of the dominant and servient estates must not unreasonably interfere with use of an easement. Taylor v. Heffner,359 Pa. 157, 163; 58 A.2d 450, 453 (Pa. 1948); Palmer v. Soloe, 601 A.2d 1250, 1253 (Pa. Super. 1992). Unreasonable interference has been discussed in case-law. A swinging gate, which requires one to exit the

[2] Plaintiffs' complaint also sought to enjoin the posting of no trespass signs but no evidence was presented in support of that claim.

vehicle to operate and then re-exit the vehicle to close, is not a legal obstruction of an easement. *See*, Haig Corp. v. Thomas S. Gassner Co., 163 Pa. Super. 611, 63 A.2d 433 (Pa. 1949). In addition, Common Pleas Courts have concluded that speed bumps do not constitute unreasonable interference with use of an easement. *See e.g.,* Herzog v. Kurlansik, No. 2010-C01798 (Lehigh Co. Oct. 15, 2012).

In the present case, the drainage ditches provide minimal impact to traveling over the road. Certainly the drainage ditches are less of an obstruction than a swinging gate or speed bumps. Parking on the roadway to prevent passage would unreasonably obstruct usage. However, the evidence was that except for very few occasions, such parking was temporary for loading and unloading. On rare occasions when the vehicle was parked for longer periods, the Defendants would move the parked vehicles upon request. There was only one instance when the Defendants were unavailable to move the vehicle for passage and one instance where the vehicle was parked but the roadway was a sheet of ice. At this point, the evidence has not established an obstruction caused by parking of vehicles to warrant injunctive relief.

In order to obtain a preliminary injunction within the Commonwealth, the party requesting the injunctive relief must establish six "essential prerequisites." *Warehime v. Warehime*, 860 A.2d 41, 46 (Pa. 2004). *See also Brayman Constr. Corp. v. Dep't of Transp.*, 13 A.3d 925, 935 (Pa. 2011); *Summit Towne Ctr., Inc. v. Shoe Snow of Rocky Mount, Inc.*, 828 A.2d 995, 1001 (Pa. 2003). In particular, the requesting party must establish:

> (1) relief is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by money damages; (2) greater injury will occur from refusing to grant the injunction than from granting it; (3) the injunction will restore the parties to their status quo as it existed before the alleged wrongful conduct; (4) the petitioner is likely to prevail in the merits; (5) the injunction is reasonably situated to abate the offending activity; and (6) the public interest will not be harmed if the injunction is granted.

Brayman Constr. Corp., 13 A.3d at 935. *See also Warehime,* 860 A.2d at 46-47; *Summit Towne Centre, Inc..*, 828 A.2d at 1002.

In the present case, Plaintiffs have failed to establish immediate and irreparable harm or that their harm would outweigh Defendants' harm if an injunction is improvidently granted. Significantly, Plaintiffs failed to establish a strong likely hood of success on the merits. In short, this Court finds that Plaintiffs have not satisfied their burden and are not entitled to a preliminary injunction in this matter.

Accordingly, the Court enters the following order.

O R D E R

AND NOW, this ____day of December 2016, pursuant to this Opinion, it is hereby ORDERED and DIRECTED that Plaintiff's Motion for a Preliminary Injunction is Denied. A separate scheduling Order will be issued this date as to a non-jury trial on the Complaint.

BY THE COURT,

December 15, 2016
Date

_____
Richard A. Gray, J.

cc: Kristine L. Waltz, Esquire (for Plaintiffs)
N. Randall Sees, Esquire (for Defendants)