

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: October 6, 2020
Certiorari to the Court of Appeals, 2018CA2320 District Court, San Miguel County, 2018CV5	
Petitioner: Mark Halper, v. Respondents: Linda Moore and Jerry Moore.	Supreme Court Case No: 2020SC584
ORDER OF COURT	

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals and after review of the record, briefs, and the judgment of said Court of Appeals,

IT IS ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, OCTOBER 6, 2020.

18CA2320 Halper v Moore 05-14-2020

COLORADO COURT OF APPEALS

DATE FILED: May 14, 2020

Court of Appeals No. 18CA2320
San Miguel County District Court No. 18CV5
Honorable Mary E. Deganhart, Judge

Mark Halper,

Plaintiff-Appellant,

v.

Jerry Moore and Linda Moore,

Defendants-Appellees.

JUDGMENT AFFIRMED

Division IV
Opinion by JUDGE WELLING
Furman and Pawar, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)

Announced May 14, 2020

Mark Halper, Pro Se

Robinson Waters & O'Dorisio, P.C., Michael J. Lynch, Tracy A. Ashmore,
Elizabeth Michaels, Denver, Colorado, for Defendants-Appellees

¶ 1 Plaintiff-Appellant Mark Halper appeals the district court’s decision to dismiss his complaint for lack of subject matter jurisdiction. We affirm.

I. Background

¶ 2 Halper is the caretaker for a property owned by Sunshine Mesa, LLC, in San Miguel County. Halper also lives on the Sunshine Mesa property. Jerry and Linda Moore live on the adjacent property to the south. The Moores encumbered their private property with an easement in favor of Sunshine Mesa. This easement allows Halper limited ingress and egress in order to access the home on the Sunshine Mesa property. Halper uses the easement and parks his vehicle and snowmobile in a designed location in the easement area provided by the Moores.

¶ 3 In October 2018, Jerry Moore installed “water bars” — similar to speedbumps — on his private road, to assist water drainage and runoff. The water bars extended into the easement area. To prevent vehicle damage while driving on the water bars, Moore also placed a warning sign that read, “Danger — Restricted 10 MPH.” After the water bars and warning sign were placed, Moore also

requested that Halper park his vehicle and snow mobile in a different spot. Moore placed a “no parking” sign and two logs, blocking the space where Halper used to park within the easement area.

¶ 4 Halper filed an action against the Moores, seeking relief pertaining to the easement. Halper specifically complained of the impediments and obstructions placed in the easement area, as well as the speed limit signs along that portion of the road. Halper alleged that the waters bars obstructed his access to the easement area and created a nuisance for Halper and his guests. The Moores moved to dismiss the complaint under C.R.C.P. 12(b)(1), alleging that Halper was not a real party in interest, as required by C.R.C.P. 17(a), with standing to bring an action related to the easement.

¶ 5 The district court granted the motion and dismissed the complaint on the grounds that Halper lacked standing to bring an action on an easement.

¶ 6 This appeal followed.

II. Legal Principles

¶ 7 A motion to dismiss under C.R.C.P. 12(b)(1) for lack of subject matter jurisdiction. We review de novo both a district court's ruling on a motion to dismiss, *Yadon v. Lowry*, 126 P.3d 332, 335 (Colo. App. 2005) and whether a plaintiff has standing to sue. *Ainscough v. Owens*, 90 P.3d 851, 851 (Colo. 2004).

¶ 8 Standing is a jurisdictional prerequisite to every case. *Espinosa v. Perez*, 165 P.3d 770, 772 (Colo. App. 2006). At the district court level, the plaintiff bears the burden of proving jurisdiction. *City of Boulder v. Pub. Serv. Co. of Colo.*, 2018 CO 59, ¶ 14. In order to have standing to sue, a plaintiff must have both a legally protected interest and have suffered an injury-in-fact. *Ainscough*, 90 P.3d at 855.

¶ 9 Only a real party in interest may pursue a cause of action. C.R.C.P. 17(a). A real party in interest is the party who, by virtue of the substantive law, has the right to invoke the aid of the court to vindicate the legal interest in question. *Ogunwo v. Am. Nat. Ins. Co.*, 936 P.2d 606, 609 (Colo. App. 1997). One who holds the legal title has a legally protected interest. *Koch v. Story*, 47 Colo. 335, 338 (1910); *Platte Valley Sav. by Resolution Tr. Corp. v. Crall*, 821

P.2d 305, 307 (Colo. App. 1991). Therefore, only a property owner is a real party in interest when it comes to enforcing the dominant parcel's easement rights. *Id.*

III. Analysis

¶ 10 Halper contends that standing is not dependent on property ownership. We disagree.

¶ 11 In order for Halper to bring an action to enforce the easement, he must have standing. *Sinclair Transportation Co. v. Sandberg*, 350 P.3d 924, 929 (Colo. App. 2014). In order to have standing, Halper must demonstrate that he has a legal interest in the property appurtenant to the easement, protecting against the injury. *Ainscough v. Owens*, 90 P.3d 851, 856 (Colo. 2004). The legally protected interest in an easement is held by the dominant estate. *Lobato v. Taylor*, 71, P.3d 938, 945 (Colo. 2002) (concluding that an easement appurtenant runs with land). Thus, Halper was required to demonstrate that he has a legal interest arising out of contract, tort, statute, or other law in the Sunshine Mesa property. *Ainscough*, 90 P.3d at 856.

¶ 12 Halper did not demonstrate the existence of a legal right or interest in the Sunshine Mesa property. *City of Boulder*, ¶ 14.

There is no dispute that Halper does not own the property or hold any legal title to it (nor does he allege that he has any legal interest in the property). Thus, Halper does not have a protected legal right or interest in the property, he is not the real party in interest, and, therefore, he lacks standing to ask the court to address the easement issues he asserts in his complaint.¹ Simply put, while Halper may have the right to utilize the easement, as he has done for many years, he does not have standing to bring an action to enforce it. *Ainscough*, 90 P.3d at 856.

¶ 13 We conclude that because Halper did not allege facts that meet the standing requirements of C.R.C.P. 17(a), the district court correctly dismissed his complaint for lack of standing. *Hotaling v.*

¹ In a similar appeal involving different defendants, Halper challenged the virtually identical ruling of the district court regarding his lack of standing. *See Halper v. Passes*, (17CA288, March 8, 2018) (not published pursuant to C.A.R. 35(e)). The division in that case concluded that Halper did not hold legal title and therefore “was not the real party in interest” regarding the same property. *Id.* at ¶ 24. Thus, the division concluded that the “district court correctly dismissed [Halper’s complaint]” for failing to meet the standing requirements of C.R.C.P. 17(a). *Id.* at ¶ 25.