

Filed in District Court  
State of Minnesota  
JUL 23 2021

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HUBBARD

NINTH JUDICIAL DISTRICT

Tara Houska, Winona LaDuke,  
AhnaCole Chapman,  
Switchboard Trainers Network,

Court File No. [REDACTED]

vs.

**TEMPORARY  
RESTRAINING  
ORDER**

County of Hubbard, Corwin Aukes,  
Mark Lohmeier,

The above-entitled matter came before the undersigned Judge of District Court on July 22, 2021, pursuant to plaintiffs' *ex parte* motion for temporary injunctive relief enjoining and barring defendants from: (1) barricading, obstructing, or otherwise interfering with access to the disputed property, including by vehicular use of the driveway, except at the specific request of the property owner or its authorized tenants or invitees; (2) stopping vehicles or persons and/or issuing citations and/or arresting or threatening to arrest any person for any violation premised on the person's presence on the driveway or driving a motorized vehicle upon the driveway during the pendency of this action, except at the specific request of the property owner or its authorized tenants or invitees. The Court directed that notice of the hearing be given to Defendants and that they be permitted to appear. The hearing was held remotely, by Zoom.

Plaintiffs were represented by attorney Jason Steck. Defendants are represented by Assistant Hubbard County Attorney Anna Emmerling.

Based upon the file and arguments of counsel, this Court makes the following:

**FINDINGS**

1. The alleged facts are set forth in the verified complaint, dated July 16, 2021, and the affidavit of Plaintiffs' counsel, also dated July 16, 2021, both of which are incorporated herein by reference. The Court also incorporates herein by reference the exhibits attached to the affidavit of Ronald Seifert, also dated July 16, 2021.

2. The defendants have been provided copies of all documents that form the basis of this order.
3. A copy of the easement has not been provided to the court.
4. The resolution passed by the Hubbard County Board (Exhibit D to Mr. Seifert's affidavit) does not restrict Ms. LaDuke's ability to transfer the easement.
5. By purchasing the easement, Ms. LaDuke acquired a property right.
6. Based upon the record before the court, it is not clear Ms. LaDuke's easement was ever extinguished.

### **CONCLUSIONS OF LAW**


1. "A temporary injunction may be granted if by affidavit, deposition testimony, or oral testimony in court, it appears that sufficient grounds exist therefore." Minn. R. Civ. P. 65.02(b).
2. The facts upon which courts rely in determining whether to grant temporary relief are provisional in nature and do not constitute an adjudication of issues on the merits.  
*Dahlberg Brothers, Inc. v. Ford Motor Company*, 137 N.W.2d 314, 321 (Minn. 1965);  
*ISD No. 35 v/. Engelstad*, 144 N.W.2d 245, 248 (Minn. 1966).
3. In considering whether to grant injunctive relief, the court should consider the following factors as set forth in *Dahlberg*, 137 N.W.2d at 321:
  - a. The nature and background of the relationship between the parties;
  - b. The harm to be suffered by the plaintiffs if the temporary restraint is denied as compared to that inflicted on defendant if the injunction issues pending trial;
  - c. The likelihood that one party or the other will prevail on the merits;
  - d. The aspects of the fact situation, if any, which permit or require consideration of public policy expressed in the statutes, state and federal; and

- e. The administrative burdens involved in judicial supervision and enforcement of the temporary decree.
4. Easements are property rights under the Minnesota constitution and cannot be taken without compensation. *Burger v. City of St. Paul*, 64 N.W.2d 73, 77 (Minn. 1954).

### ORDER

1. Plaintiffs' motion for temporary restraining order is **GRANTED**. Until further order of this Court, Defendants are enjoined from (1) barricading, obstructing, or otherwise interfering with access to the property located at [REDACTED], Minnesota, including vehicular use of the driveway, except at the specific request of the property owner or its authorized tenants or invitees; (2) stopping vehicles or persons and/or issuing citations and/or arresting or threatening to arrest any person for any violations premised on the person's presence on the driveway or driving a motorized vehicle upon the driveway during the pendency of this action, except at the specific request of the property owner or its authorized tenants or invitees.
2. This order does not restrict the ability of law enforcement to interfere with access to the property, or stop vehicles or persons on the driveway or easement, pursuant to a valid warrant or for criminal conduct.
3. Defendants may obtain a hearing date and time to show cause why this order should be rescinded or modified.
4. The attached Memorandum is a part of this order.

### IT IS SO ORDERED:

 Austad, Jana  
2021.07.23  
07:58:48 -05'00'  
\_\_\_\_\_  
Jana M. Austad  
Judge of District Court

## **MEMORANDUM**

Based upon the limited record before this court, the *Dahlberg* factors favor the plaintiffs.

### **A. Nature and Relationship of the Parties**

The parties have a preexisting relationship in which Plaintiff LaDuke sought an easement across County tax-forfeited property. She was granted that easement by the Hubbard County Board, and paid for that easement. The resolution passed by the Hubbard County Board did not place any restrictions upon Ms. LaDuke's ability to transfer the easement and the resolution does not include any language indicating that the County has the ability to extinguish the easement other than through non-use. This pre-existing relationship, in which defendant Hubbard County approved of and sold the easement to Plaintiff LaDuke, weighs heavily in plaintiffs' favor.

### **B. Balance of Harms Between the parties**

Plaintiffs allege that the Hubbard County Sheriff's Department has been blockading and restricting access to the property in such a way as to make it practically impossible for the property owner, assignees and guests to enjoy the property. This is a substantial violation of plaintiffs' right to the use and enjoyment of the property. The alleged conduct of the Hubbard County Sheriff's Department could also, if established, be a deprivation of constitutional rights. The harm to plaintiffs is significant. Defendants have not identified harm they would suffer if the injunction were granted. This factor weighs heavily in plaintiffs' favor.

### **C. Likelihood of Success on the Merits**

The record before the court is limited to the allegations and exhibits submitted by plaintiffs. Based upon these allegations, plaintiffs would have a high likelihood of success in either enforcing the easement granted by the Hubbard County Board or by establishing a prescriptive easement or easement by necessity.

Even considering the arguments made on behalf of Defendants at the hearing, there is no basis for finding that Defendants would be likely to succeed on the merits. The argument that the Hubbard County Sheriff's Department is only preventing use of the easement if people are attempting to enter the property, not exit the property, is suggestive that the Sheriff's actions are directed towards a law enforcement goal, rather than seeking to address property rights. This factor weighs heavily in plaintiffs' favor.

#### **D. Public Policy Considerations**

Plaintiffs have strong public policy considerations on their side as plaintiff's position is that Defendants are interfering with fundamental rights including, but not limited to, the right to peaceably assemble, the right to be free of unreasonable seizures, the right to not have property rights taken without just compensation.

Defendants seem to assert the restrictions on the ability of plaintiffs and guests to use the property is a police action justified by issues related to Line 3 protests. If that is accurate there are lawful means of police action by warrant. This action is about an easement. There is no showing that the law is being broken on the disputed easement. The evidence before the court does not support Defendants' interpretation of the easement or law enforcement actions to blockade and criminalize the use of the driveway in existence for 90 years. This factor weighs heavily in plaintiff's favor.

#### **E. Administrative Burden**

This court does not anticipate any administrative burden in connection with this order. This factor weighs in favor of plaintiffs.

**J.M.A.**