

REPORTER'S RECORD
VOLUME 1 OF 1 VOLUMES
CAUSE NO. 471-01040-2022

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HENRY MISHKOFF,) IN THE 471ST
)
Plaintiff,)
)
vs.) JUDICIAL DISTRICT COURT
)
SONIA BRYANT,)
)
Defendant.) COLLIN COUNTY, TEXAS

TEMPORARY INJUNCTION HEARING

On the 31st day of May, 2022, the following proceedings came on to be held in the above-titled and numbered cause before the Honorable ANDREA BOURESSA, Judge Presiding, held in McKinney, Collin County, Texas.

Proceedings reported by computerized stenotype machine.

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I N D E X
VOLUME 1
(TEMPORARY INJUNCTION HEARING)

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P R O C E E D I N G S

1
2 THE COURT: We'll go on the record in
3 Cause No. 471-01040-2022.

4 Who do we have for the applicant?

10:49 AM 5 MR. NEWTON: Yes, Your Honor, this is
6 Robert Newton.

7 And would you prefer us sitting or
8 standing?

9 THE COURT: You can sit if you're going
10 to use the microphone.

10:49 AM 11 MR. NEWTON: Okay. Your Honor, we're
12 here on the application of the temporary injunction of
13 my client. Mr. Henry Mishkoff, owns a property in
14 Dallas, Texas, in the Collin County area, and is
10:49 AM 15 neighbors with the defendant, Ms. Sonia Bryant.

16 And the way this property is designed, or
17 this subdivision is designed, that they have portions of
18 Mrs. Bryant's driveway are owned by other people in the
19 subdivision. The reason it was designed that way is to
10:50 AM 20 actually provide each of them an address down to
21 Windhaven, is my understanding, which is the main road
22 there and a requirement for the building permit.

23 In doing so, we have a lot of messy lot
24 lines. And part of these messy lot lines is the fact
10:50 AM 25 that Ms. Bryant has to pass over other people's property

10:50 AM 1 to get onto her property, and my client, Mr. Mishkoff,
2 has to pass over other people's property to kind of get
3 to his property as well.

4 So the subject of this dispute is that
10:50 AM 5 there's a portion of Mr. Mishkoff's property that is
6 really kind of inaccessible to him without passing along
7 and over the driveway of the neighbor, Mrs. Bryant. And
8 we'll have plats and everything to show, and we'll get
9 Mr. Mishkoff on the stand as well, Your Honor, to
10:51 AM 10 testify as to that effect.

11 That's about it.

12 THE COURT: All right. Thank you.

13 And then the response?

14 MR. GARRETT: Your Honor, we've filed a
10:51 AM 15 brief. Hopefully the Court's had a chance to take a
16 look at it. We don't think that this is a case that
17 they're entitled to temporary injunctive relief.

18 We also have a couple pleading problems.
19 It's an unverified application, in violation of Rule
10:51 AM 20 682.

21 Also, the pleading is wholly devoid of
22 any reference to the third element required under Texas
23 Supreme Court case opinion, *Butnaru*. They have not pled
24 a probable imminent or irreparable injury for which
10:51 AM 25 Mr. Mishkoff has no adequate remedy at law. That case

10:51 AM 1 says there is a pleading burden and a proof burden.
2 They will not have been able to meet their pleading
3 burden because their pleading is just absolutely silent
4 on any of those things.

10:51 AM 5 Notwithstanding that, I would just sort
6 of -- I don't know if I can share my screen with Your
7 Honor.

8 THE COURT: Officer Burnett, is that
9 screen on?

10:52 AM 10 THE BAILIFF: I just switched it, but I
11 don't think the TVs on.

12 MR. GARRETT: Well, I've got a printed
13 copy that I can --

14 THE BAILIFF: Are you plugged up?

10:53 AM 15 THE COURT: Yes, but that looks like an
16 Apple.

17 MR. NEWTON: Yeah.

18 THE BAILIFF: Ours is not compatible with
19 Apple.

10:53 AM 20 MR. GARRETT: That's fine.

21 May I approach, Your Honor?

22 THE COURT: You may.

23 MR. GARRETT: This is just sort of a
24 sketch so that Your Honor can be familiar with the
10:53 AM 25 property.

10:53 AM 1 Mr. Newton is correct, the lot lines are
2 really weird in this neighborhood. You'll see the top
3 is 4600 Windhaven Lane. This particular neighborhood is
4 a cul-de-sac, and you'll see that Mr. Mishkoff's
10:53 AM 5 property is lot 31. It actually takes sort of an L
6 shape, and he has a small piece that goes across my
7 client's yard and across her driveway that gives him
8 access to Windhaven Lane.

9 The only part of that that's paved is the
10:53 AM 10 driveway itself. The other portion of that, that's
11 actually a yard with like a tree in it.

12 Mr. Mishkoff's property is directly to
13 the south, and the issue in this case is he claims that
14 he cannot access the side of his house without walking
10:54 AM 15 into the starred area. What he claims is he has to walk
16 in a circular fashion, or semicircle fashion off of his
17 property onto her property, back onto his property.

18 And what he's actually seeking is an
19 injunction that I suppose requires my client to move a
10:54 AM 20 potted plant that she has there that he claims is in his
21 way.

22 We'll show you other pictures and other
23 evidence that he can absolutely walk wholly within the
24 big square at the bottom, the rectangle. The Mishkoff
10:54 AM 25 property is where he can absolutely and his wife can

10:54 AM 1 absolutely stay on their property to access the side of
2 his house.

3 So we don't think that there's any --
4 even though it's not been pled, there is no imminent
10:54 AM 5 harm for which the Court should issue an injunction.

6 THE COURT: All right. And the witnesses
7 today will be?

8 MR. NEWTON: Henry Mishkoff, Your Honor,
9 for the plaintiff.

10:55 AM 10 THE COURT: Okay. Any witnesses for the
11 defendant?

12 MR. GARRETT: Undetermined at this time,
13 but if so it would be Ms. Bryant.

14 THE COURT: All right. Let me go ahead
10:55 AM 15 and swear in both Mr. Mishkoff and Ms. Bryant.

16 *(Witnesses sworn)*

17 THE COURT: If you'd just be a little
18 louder.

19 All right. Thank you. You may both be
10:55 AM 20 seated.

21 You may begin.

22 MR. NEWTON: Your Honor, I would like to
23 call Henry Mishkoff to the stand.

24 THE COURT: Mr. Mishkoff if you would
10:55 AM 25 please come sit over here in the witness chair, and make

10:55 AM 1 sure that the green light on that microphone is on.

2 THE WITNESS: Okay. The light is on.

3 THE COURT: Great.

4 MR. NEWTON: May I approach, Your Honor?

10:55 AM 5 THE COURT: You may.

6 **HENRY MISHKOFF,**

7 having been first duly sworn, testified as follows:

8 **DIRECT EXAMINATION**

9 BY MR. NEWTON:

10:55 AM 10 Q. All right, Mr. Mishkoff, this is Plaintiff's
11 Exhibit 1 which shows two houses. And I'm actually
12 going to let you review this one. Sorry about that.

13 MR. NEWTON: Your Honor, would you like
14 me to pass that along to you?

10:56 AM 15 THE COURT: Thank you.

16 Does defense counsel have a copy of your
17 exhibits?

18 MR. GARRETT: Yes, Your Honor, I do.

19 MR. NEWTON: We'd like to admit
10:56 AM 20 Plaintiff's Exhibit 1 into evidence, Your Honor.

21 MR. GARRETT: No objection.

22 THE COURT: All right. Plaintiff's 1 is
23 admitted.

24 Q. (BY MR. NEWTON) Mr. Mishkoff, could you
10:56 AM 25 describe to me what Plaintiff's Exhibit 1 is looking at?

10:56 AM 1 A. Okay. Please let me know if my mask is
2 getting in the way, or can you hear me?

3 THE COURT: I can hear you just fine.
4 Thank you.

10:56 AM 5 THE WITNESS: Well, that's my house on
6 the left, and that's Ms. Bryant's house, unfortunately
7 mostly in the shadow, on the right.

8 How much detail do you want me to go into
9 about this?

10:56 AM 10 Q. (BY MR. NEWTON) So in looking at that house,
11 if you -- if you look at the house, what orientation,
12 directional orientation is Mrs. Bryant's house in
13 relation to your own house?

14 A. Ms. Bryant's house is north of my house. So
10:57 AM 15 this photo is looking west.

16 MR. NEWTON: Your Honor, I hate to do
17 this, I'm going to try to put this on the screen as
18 well, but I'd like to admit Plaintiff's Exhibit 4. This
19 is the plat of the subdivision.

10:57 AM 20 THE COURT: Any objection to Plaintiff's
21 4?

22 MR. GARRETT: No, Your Honor.

23 THE COURT: All right. Plaintiff's 4 is
24 admitted.

10:58 AM 25 Q. (BY MR. NEWTON) Okay. Mr. Mishkoff, can you

10:58 AM 1 see this plat well enough?

2 A. I can.

3 Q. Okay. Could you describe for me which lot is
4 yours on this property?

10:58 AM 5 A. My lot is number 31.

6 Q. Okay. Your lot is number 31. And which lot
7 is Mrs. Bryant's?

8 A. Ms. Bryant's lot is number 32.

9 Q. Okay. So can you see those property lines
10 well enough on the screen?

11 A. I think so, yes.

12 Q. Okay. So can you describe to me, and if you
13 can even point, to the center line of that driveway as
14 shown on the plat?

10:58 AM 15 A. When you say "point," is this a --

16 Q. The line. Just kind of the center line for
17 the driveway.

18 THE COURT: You'll have to use that
19 screen to point.

10:58 AM 20 Q. (BY MR. NEWTON) Let me use my mouse. Is this
21 here the centerline for the driveway?

22 THE WITNESS: Is it okay if I get up and
23 go there?

24 THE COURT: Yes.

10:59 AM 25 THE WITNESS: You mean the driveway? The

10:59 AM

1 paved portion of Windhaven?

2 Q. (BY MR. NEWTON) Right.

3 A. Yes. The long line -- the longest straight
4 line there is the center of the driveway that leads into
10:59 AM 5 the cul-de-sac.6 Q. Okay. And so the driveway is roughly from
7 which line to which?

8 A. From the line you're on now?

9 Q. From this line.

10:59 AM

10 A. Yes, which is a 10-foot line to the left of
11 the center. 20 feet over.12 Q. So it's about a 20-foot wide driveway; is that
13 correct?

14 A. Right.

10:59 AM

15 Q. All right. And so your property runs from the
16 street all the way up?17 A. Oh, you're not on -- you're on my neighbor's
18 property there. It's the next one.19 THE COURT: Okay. I've got to interrupt
10:59 AM 20 you for a second.

21 Is this picture the same as this picture?

22 MR. NEWTON: Yes, ma'am.

23 THE COURT: And what portion are you
24 looking at?

11:00 AM

25 MR. NEWTON: May I approach, Your Honor?

11:00 AM

1

THE COURT: You may.

2

MR. NEWTON: That would be the easiest way for me to detail this for you.

3

THE COURT: Because the numbering does not appear to be the same.

11:00 AM

5

6

MR. NEWTON: So it's lot 32 is --

7

THE COURT: So on this depiction, which is not in evidence, but this demonstrative, 31 and 34 are adjoining, and it's the same on that.

8

9

11:00 AM

10

MR. NEWTON: It should be 31 and 32 are north and south to each other.

11

12

THE COURT: 31 and 34 here are next to each other, and here 31 and 34 are not next to each other. So I'm just trying to figure out what I'm looking at.

13

14

11:00 AM

15

16

MR. NEWTON: Oh, I'm not sure. I haven't seen this one.

17

18

THE COURT: On this one I see --

19

MR. NEWTON: Are these two not the same?

11:00 AM

20

THE COURT: 30 to the right of 31, and then 32 above 31, and 33 above 30.

21

22

MR. NEWTON: Oh, I'm sorry. That might be a different -- that's a different block, I believe. We're on the southern side. There's another 32 right there, Your Honor.

23

24

11:00 AM

25

11:01 AM

1

THE COURT: All right. There's another

2

32.

3

MR. NEWTON: With 31. I apologize.

4

THE COURT: My eyesight is not good

11:01 AM

5

enough to read that 32.

6

MR. NEWTON: I know. No one's is,

7

unfortunately. I could have done a better job of the

8

lot blocks.

9

THE COURT: 31 is the plaintiff's

11:01 AM

10

property. 32 is the defendant's property. Is that

11

correct?

12

MR. NEWTON: That is correct, Your Honor.

13

THE COURT: Okay.

14

Q. (BY MR. NEWTON) So Mr. Mishkoff, so this is --

11:01 AM

15

your property runs from Windhaven south all the way

16

along this line into here; is that correct?

17

A. That's correct.

18

Q. And this is not in the driveway, correct?

19

A. It crosses -- When you say "the driveway," are

11:01 AM

20

you talking about Ms. Bryant's property or the common

21

drive?

22

Q. No, I'm sorry. The common drive.

23

A. That is not in the common drive.

24

Q. So what is this in reality? Like if we're

11:01 AM

25

looking at it in person, what is this up here?

11:02 AM 1 A. The first portion of it is Ms. Bryant's
2 driveway, and the rest of it is Ms. Bryant's front lawn.

3 Q. Right. So Mrs. Bryant's front yard is -- a
4 good portion of it is actually in your property; is that
11:02 AM 5 correct?

6 A. Most of her front yard, yes, is in my property
7 and my other neighbor's property. Very little of her
8 front yard is actually her property.

9 Q. Okay. And then everybody kind of shares this
11:02 AM 10 drive and comes in and pulls into their own
11 neighborhood.

12 And the way Mrs. Bryant's works, she
13 pulls in and her garage is up here but her carport's
14 over here; is that correct?

11:02 AM 15 A. Right. I would say first the carport, then
16 the garage and then the house.

17 Q. Okay. So if you can -- if you can look at --

18 THE COURT: Can I ask on Plaintiff's
19 Exhibit 1 which direction -- are these facing north?

11:03 AM 20 Q. (BY MR. NEWTON) Could you go back and look at
21 Plaintiff's Exhibit 1, Mr. Mishkoff?

22 So this is Plaintiff's Exhibit 1.

23 A. Should I stay over here or should I sit down?

24 Q. You can stay there, that's fine.

11:03 AM 25 Which house is yours?

11:03 AM 1 A. My house is on the left. That's to the south.
2 Ms. Bryant's house is to the north on the right, so the
3 camera is facing due west.

4 Q. Okay. And so can you point -- and I know this
11:03 AM 5 is not going to be exact. Can you point to roughly
6 where your property line runs?

7 A. Yeah. My property runs -- there's a strip
8 10-foot wide that runs down to Windhaven. I don't want
9 to block anybody. I'd say about there.

11:03 AM 10 Actually, there's a little -- you can't
11 even probably barely see it. There's a little
12 electrical circuit box there I never noticed before, but
13 when I look at the survey I see that as the easternmost
14 portion of Ms. Bryant's property.

11:04 AM 15 Q. So it's fair to say that you -- like between
16 you and your other neighbor, not Mrs. Bryant, y'all own
17 pretty much the entirety of Mrs. Bryant's driveway, or
18 at least the majority of it until it turns into the
19 garage?

11:04 AM 20 A. Well, the driveway, of course, goes all the
21 way back to the fence, but the part that goes here that
22 goes back to the garage is, yes, is mostly not her
23 property.

24 Q. Okay. And so could you point on that picture
11:04 AM 25 to the portion of your property you are trying to

11:04 AM 1 access?

2 A. Yes. There's a strip -- you can barely see it
3 here. It's 5 feet wide. It runs along the north side
4 of my house. I've just got it covered in river rock.

11:04 AM 5 So you can see at the side of my house
6 there going west, there's a strip here, an east-west
7 strip just behind the tree that is 5 feet wide.

8 MR. NEWTON: May I approach, Your Honor?

9 THE COURT: You may.

11:05 AM 10 Q. (BY MR. NEWTON) I want to show you Exhibit 2
11 right here, and I will bring this up.

12 MR. NEWTON: And Your Honor, plaintiff
13 would like to admit Exhibit 2 into evidence.

14 MR. GARRETT: No objection.

11:05 AM 15 THE COURT: Plaintiff's 2 is admitted.

16 Q. (BY MR. NEWTON) Hopefully I can pull the right
17 picture up here for you.

18 That's not Exhibit 2. I apologize. I'm
19 looking for it on my computer so I can bring it up.

11:06 AM 20 Could you describe what we're looking at
21 on Exhibit 2? It's not on the screen. It's in the
22 picture.

23 A. Yeah. Those are -- pretty much in the center
24 of the photo are some flowerpots that Ms. Bryant has put
11:06 AM 25 there to hinder my access from getting from one part of

11:06 AM 1 my property to another. That's it in the most general
2 terms.

3 Q. Now I want to show you Exhibit 3.

4 MR. NEWTON: May I approach, Your Honor?

11:06 AM 5 THE COURT: You may.

6 MR. NEWTON: I'd like to admit those into
7 evidence.

8 THE COURT: You're offering this?

9 MR. NEWTON: Yes, Your Honor.

11:06 AM 10 THE COURT: Any objection to Plaintiff's
11 3?

12 MR. GARRETT: No, Your Honor.

13 THE COURT: Plaintiff's 3 is admitted.

14 Q. (BY MR. NEWTON) Okay. I've got this one on
11:07 AM 15 the screen so it will be easier to show.

16 So can you using this photo show how you
17 typically approached that area of the yard?

18 A. Well, to get to that strip, that 5-foot wide
19 of land on the north side of my property, I would walk
11:07 AM 20 from my grass over Sonia's driveway, and then onto the
21 rocks, which are -- which is the north side of my
22 property.

23 Q. And so could you describe what else is back
24 there?

11:07 AM 25 A. On the north side of my property all of my

11:07 AM 1 circuit breaker boxes are there, all of my utility boxes
2 are there, my electric meter, my cable, my phone.

3 I have a couple of windows that in order
4 to, you know, to wash -- like there is one of my windows
11:08 AM 5 there -- in order to wash that window that's where I
6 have to go.

7 There's a shed further back. I don't
8 know if you want to get into that or not. Right at the
9 back of that you can see the wall of my shed. The back
11:08 AM 10 of my shed faces onto Ms. Bryant's driveway.

11 THE COURT: And you can go ahead and have
12 a seat.

13 MR. NEWTON: And then, Your Honor, if it
14 please the Court I'd like to show two quick videos of
11:08 AM 15 the property. I don't believe counsel's had a chance to
16 view these.

17 Do you have a problem?

18 MR. GARRETT: Go ahead.

19 MR. NEWTON: So we'd like to admit these
11:08 AM 20 into evidence, Your Honor, if it's okay.

21 Q. (BY MR. NEWTON) So Mr. Mishkoff, can you
22 describe what we are about to witness in this first
23 video?

24 THE COURT: Have the videos been marked?

11:08 AM 25 MR. NEWTON: No, Your Honor.

11:08 AM

1 THE COURT: And do you have them in a
2 format that you can leave with --

3 MR. NEWTON: There in MP4, and I can
4 forward those to -- as Exhibits 6 and 7.

11:09 AM

5 THE COURT: Ms. Moses, do you have the
6 ability to receive MP4 videos via email?

7 THE REPORTER: I do.

11:09 AM

8 THE COURT: Okay. We have a 471st
9 exhibit email address, if you would send them to that
10 email address marked appropriately, and then, Ms. Moses,
11 we can get those to you.

12 THE REPORTER: Sure. I just need to know
13 which one is which.

11:09 AM

14 THE COURT: Or alternatively, if you have
15 the ability to put them on a flash drive -- I don't know
16 what the size of the files is and --

17 MR. NEWTON: Let me see if I have a flash
18 drive. I can email them, Your Honor.

11:09 AM

19 THE COURT: Okay. But you're marking
20 them as 6 and 7?

21 MR. NEWTON: Yes, Your Honor.

22 THE COURT: Any objection to 6 and 7?

23 MR. GARRETT: I can see 6. I don't have
24 any objection.

11:09 AM

25 Will you just pull up 7 and let me see 7?

11:09 AM

1

MR. NEWTON: Yes.

2

THE COURT: Okay. Plaintiff's 6 is

3

admitted.

4

MR. NEWTON: Can we do it in a second so

11:09 AM

5

I can show Mr. Mishkoff?

6

MR. GARRETT: Sure.

7

Q. (BY MR. NEWTON) So Mr. Mishkoff, can you

8

describe to me what we are about to see?

9

A. Yes. That's my wife, Donna, in the pink

11:10 AM

10

slippers, and she appears to be rinsing off windows with the hose. I image she just washed them.

12

And through the screen that Ms. Bryant

13

has put on her carport, you can see Ms. Bryant. And as

14

you run the video you'll see that she's speaking -- over

11:10 AM

15

there speaking to each other. And Ms. Bryant is

16

gesturing and she's holding up a phone to record

17

everything that went on.

18

And as the video goes on you'll see that

19

she seems to be gesturing for Donna to leave. Donna is

11:10 AM

20

standing entirely on our property at this point.

21

But to get back to the front of our

22

property she's going to have to walk around that tree

23

and take half a dozen steps on Ms. Bryant's property.

24

And this runs about a minute, I think.

11:11 AM

25

Q. Mr. Mishkoff, the flowerbed that your wife is

11:11 AM 1 watering there, how long has that been there?

2 A. Well, it was laid out with the subdivision.
3 The developer put it there. I don't remember if the
4 developer had anything planted there when we moved in.

11:11 AM 5 That's probably -- those are probably plants that we've
6 planted in the last 35 years. I know we planted the
7 tree.

8 Q. How long have you lived on the property?

9 A. 35 years. We were the original owners.

11:11 AM 10 Q. And for that 35 years have you had constant
11 access to this portion of the property, at least until
12 Mrs. Bryant purchased the property?

13 A. Absolutely.

14 THE COURT: And counsel, you do have
11:11 AM 15 about five minutes remaining.

16 MR. NEWTON: Thank you, Your Honor.

17 THE WITNESS: And so Donna is standing on
18 her own -- on our property right there, and Sonia
19 continues to gesture at her.

11:12 AM 20 MR. NEWTON: I'm sorry, before I play
21 this, Your Honor, I want to get counsel's --

22 MR. GARRETT: That's fine.

23 MR. NEWTON: Your Honor, this would be
24 Exhibit 7.

11:12 AM 25 MR. GARRETT: No objection, Your Honor.

11:12 AM

1

THE COURT: Plaintiff's 7 is admitted.

2

Q. (BY MR. NEWTON) Could you describe what we are witnessing here?

3

4

A. Yeah. It looks to me like Donna is washing windows, and Ms. Bryant pulls up and waits. I know it

11:12 AM

5

doesn't take that long for her to get into her garage,

6

but she is just waiting there because she knows that

7

Donna is going to have to walk across her property. And

8

as you see -- you can't see really clearly and I have no

11:12 AM

9

sound, but she jumps out of her car and confronts Donna

10

as Donna takes just a few steps across her property to

11

get over to my front yard.

12

MR. NEWTON: Your Honor, may I approach?

13

THE COURT: You may.

14

11:13 AM

15

MR. NEWTON: Your Honor, I would like to

16

introduce Plaintiff's Exhibit 5, which is the

17

declarations of covenants and restrictions for the --

18

pertaining to the property.

19

THE COURT: Any objection?

11:13 AM

20

MR. GARRETT: No, Your Honor.

21

THE COURT: Plaintiff's 5 is admitted.

22

Q. (BY MR. NEWTON) Mr. Mishkoff, here is a --

23

your copy here.

24

Mr. Mishkoff, could you read Section 6 on

11:13 AM

25

page 3 for me?

11:13 AM 1 A. Okay. I guess that's what you have starred?

2 Q. Yes, I did star it.

3 A. Okay. It says, "Each owner shall have a
4 nonexclusive easement which is hereby reserved by

11:13 AM 5 defendant on his behalf over and upon the portions of
6 the affected lots within the maintenance area associated
7 with each owner's affected lot for purposes specified in
8 Article 4, Section 1."

9 Q. Mr. Mishkoff, are you an owner of a property
10 in that subdivision?

11 A. I am.

12 Q. Is your lot one of the affected lots?

13 A. Yes, it is.

14 Q. Is your affected lot within a maintenance
11:14 AM 15 area?

16 A. It is.

17 Q. Do you use that property -- or that portion of
18 Mrs. Bryant's property, or Ms. Bryant's property, to
19 access your northern -- or access the northern portion
11:14 AM 20 of your property?

21 A. I do.

22 Q. And do you use it for the purpose of
23 maintenance and keeping things clean?

24 A. I do.

11:14 AM 25 Q. And have you ever used it -- or if you had to

11:15 AM 1 use it to paint the siding, would you use it to paint
2 the siding over there?

3 A. I have had painters who have painted the
4 siding and they have had to cross Ms. Bryant's property.

11:15 AM 5 Q. Have you ever had to access it for the circuit
6 breaker?

7 A. Yes, I have.

8 Q. Have you ever had the police called when you
9 try to access that portion of your property?

11:15 AM 10 A. Yes, I have.

11 Q. How many times?

12 A. I'm going to say three. I'm not sure. It's
13 somewhere in that range.

14 Q. Would you consider it important, even
11:15 AM 15 imminent, to need access to that property to mess with
16 the circuit breaker, the AC switches, anything like
17 that?

18 A. Absolutely.

19 MR. NEWTON: No further questions, Your
11:15 AM 20 Honor.

21 THE COURT: All right. Any questions,
22 Mr. Garrett?

23 MR. GARRETT: I have a few.

24

11:16 AM 25 (No omissions)

CROSS-EXAMINATION

11:16 AM 1
2 BY MR. GARRETT:

3 Q. Mr. Mishkoff, how many times have you been
4 inside Ms. Bryant's carport?

11:16 AM 5 A. Since Ms. Bryant has owned the property?

6 Q. Yes, sir.

7 A. You mean while it's been hers?

8 I would -- I can think of three times,
9 and there may have been one or two more times.

11:16 AM 10 Infrequently.

11 Q. Okay. Would you look at Plaintiff's Exhibit
12 No. 2 for me? Do you have it up there?

13 A. Oh, our exhibits?

14 Q. Yes, sir.

11:16 AM 15 A. No. 2, yes?

16 Q. Yes, sir.

17 Is it your contention that these potted
18 plant are preventing you from accessing your electrical
19 box?

11:16 AM 20 A. The potted plants appear in different
21 configurations at different times. She's had anywhere
22 from three to five. Sometimes they are spread out.
23 Sometimes they are condensed. Sometimes they have
24 plastic bags over them and in various configurations.

11:17 AM 25 Yes, I have had to move at least one plant to access

11:17 AM 1 that portion of my property.

2 Q. So you can move a plant and walk between the
3 plants to access your box? Yes?

4 A. The plants are filled with rocks. They are
11:17 AM 5 very heavy. I can do it. My wife would absolutely not
6 be able to do it.

7 If she had a circuit breaker go out and I
8 was not home, she would have to wait for me to come
9 home.

11:17 AM 10 Q. Okay. So the answer to my question then is,
11 yes, you can move them?

12 A. Yes, I can and have moved them.

13 Q. And you're the only person listed as a title
14 owner of your residence, right? Your wife is not on the
11:17 AM 15 title?

16 A. That's correct.

17 Q. Okay. Mr. Mishkoff, you can walk between
18 those potting plants, can't you?

19 A. Not the ones that -- the way you have pictured
11:17 AM 20 there from what I'm looking at.

21 Q. Okay. When did those potted plants first
22 arrive?

23 A. If I had to guess, I'd say six to eight months
24 ago.

11:18 AM 25 Q. Okay. In that Exhibit No. 6, the video where

11:18 AM 1 your wife was using the water hose, that video is more
2 than a year old, isn't it?

3 A. I believe so.

4 Q. Yes. And Exhibit 7, that video is also more
11:18 AM 5 than a year old, isn't it?

6 A. I believe so.

7 Q. And so you thought the best thing to do would
8 be to come to court and ask that my client be -- do
9 something -- we still don't know exactly what it is that
11:18 AM 10 you're asking the Court -- but you thought the better
11 decision would be to come to court and spend everyone's
12 money versus walking between a potted plant?

13 A. First of all, I'm not sure what that has to do
14 with the two videos because the plants weren't there at
11:18 AM 15 the time, so I'm not sure if the two parts of your
16 statement are related.

17 But, yes, I thought that it would --
18 There have been times when I've had to move them, as you
19 say, at least one of them, probably only one of them,
11:18 AM 20 maybe two of them, to get to the side of my property.
21 And as I say, my wife, who lives there with me, cannot
22 move the plants.

23 So, yes, I thought it would be best to go
24 to court to force Ms. Bryant to remove what I call the
11:19 AM 25 blockade.

11:19 AM 1 MR. GARRETT: May I approach, Your Honor?

2 THE COURT: You may.

3 Q. (BY MR. GARRETT) Mr. Mishkoff, I'm going to
4 hand you what's been marked Defendant's Exhibit No. 1.

11:19 AM 5 Do you recognize this as a letter you transmitted?

6 MR. GARRETT: A copy for Your Honor.

7 THE WITNESS: Yeah. I assume you don't
8 want me to read all of this stuff now.

9 Q. (BY MR. GARRETT) No, just let me know if you
11:19 AM 10 can identify the letter.

11 A. Yeah, this is a letter that I wrote.

12 MR. GARRETT: Your Honor, move to admit
13 Defendant's Exhibit No. 1.

14 THE COURT: Any objection to Defendant's
11:19 AM 15 1?

16 MR. NEWTON: No, Your Honor.

17 THE COURT: All right. Defendant's 1 is
18 admitted.

19 Is the witness' copy marked?

11:19 AM 20 MR. GARRETT: It is, Your Honor.

21 THE COURT: All right. Thank you.

22 Q. (BY MR. GARRETT) Mr. Mishkoff, that letter is
23 dated September 30th, 2020?

24 A. That's what it say, yes.

11:20 AM 25 Q. This dispute you've been having with

11:20 AM 1 Ms. Bryant has been going on since at least September
2 30th, 2020, correct?

3 A. Yes.

4 Q. Would you go to the second page? Do you see
11:20 AM 5 the second indented paragraph from the bottom, the one
6 that starts with, "We will continue to walk across your
7 driveway."

8 A. Right.

9 Q. Do you see that?

11:20 AM 10 A. I do.

11 Q. Do you see where you write, "We will continue
12 to walk across your driveway as necessary to access the
13 strip of our land on the north side of our house, which
14 we may need to do, for example, to access our circuit
11:20 AM 15 breakers and utility connections."

16 Do you see that?

17 A. I do.

18 Q. Is that what you're asking the Court to allow
19 you to do?

11:20 AM 20 A. Yes, it is.

21 Q. Okay. Do you see the next sentence where you
22 write, "The only other way force us to access the north
23 side of our house would be for us to tramp through our
24 flowerbed and to push our way through the branches of a
11:20 AM 25 tree, which we will not do."

11:20 AM

1 Do you see that?

2 A. I do.

3 Q. Is it possible to access your circuit breakers
4 while staying wholly on your own property?

11:21 AM

5 A. It is difficult but possible.

6 MR. GARRETT: Your Honor, may I approach
7 the witness again?

8 THE COURT: You may.

11:22 AM

9 Q. (BY MR. GARRETT) I'm going to hand you two
10 photographs. One is marked Defendant's Exhibit 3 and
11 one is marked Defendant's Exhibit 4.12 Taking a look at Defendant's Exhibit No.
13 3, do you recognize this as a photograph of your -- as a
14 photograph of your wife walking on the north side of
15 your house?

11:22 AM

16 A. I do.

17 Q. Okay. And it appears that she's capable of
18 walking on the north side of her house without
19 traversing onto Ms. Bryant's property.

11:22 AM

20 A. It's possible.

21 MR. GARRETT: Your Honor, I move to admit
22 Defendant's Exhibit 3.

23 MR. NEWTON: No objection, Your Honor.

24 THE COURT: All right. Defendant's 3 is
11:22 AM 25 admitted.

11:22 AM 1 Q. (BY MR. GARRETT) If you'll take a look at
2 Defendant's Exhibit No. 4 for me, please, sir.

3 A. Uh-huh.

4 Q. Do you recognize Defendant's Exhibit No. 4 as
11:22 AM 5 a photograph taken of the area between your home and
6 Ms. Bryant's home?

7 A. I do.

8 Q. Do you see that there is clear, unimpeded
9 access to your circuit boards -- your circuit breakers
11:23 AM 10 from within your own property, sir?

11 A. Not at this time of year. In the photo -- the
12 photo was taken when there are no leaves or flowers on
13 the trees and no flowers in the flowerbed.

14 Q. I see.

11:23 AM 15 A. So at this time of year it is probably the
16 only time that we could do it.

17 Q. This is a fair and accurate depiction of what
18 it appears like in between your houses during sometime
19 of the year?

11:23 AM 20 A. That's correct.

21 MR. GARRETT: Move to admit Defendant's
22 Exhibit 4, Your Honor.

23 MR. GARRETT: No objection.

24 THE COURT: Defendant's 4 is admitted.

11:23 AM 25 MR. GARRETT: May I approach briefly?

11:23 AM

1

THE COURT: You may.

2

Q. (BY MR. GARRETT) Sir, I'm going to hand you what's been marked Defendant's Exhibit No. 2. Is the person depicted in Defendant's Exhibit No. 2 appear to be you?

11:23 AM

5

6

A. It does.

7

Q. Mr. Mishkoff, this is you walking between the blockade; is it not?

8

9

A. I don't know that that's what this shows. It shows me on my property.

11:24 AM

10

11

Q. You don't believe that this is a depiction of you walking between the potted plants?

12

13

A. No. I'm on my property. I don't know how I got there. I am certainly willing to concede that I may have walked through the potted plants to have gotten there.

11:24 AM

15

16

17

Q. Okay. In this depiction there's certainly enough room for you to walk between them.

18

19

A. In this depiction. There usually is not.

11:24 AM

20

MR. GARRETT: Move to admit Defendant's Exhibit 2, a photograph of Mr. Mishkoff.

21

22

THE COURT: Any objection?

23

MR. NEWTON: No objection.

24

THE COURT: All right. Defendant's 2 is admitted.

11:24 AM

25

11:24 AM 1 Q. (BY MR. GARRETT) Mr. Mishkoff, your use of
2 that small portion of the driveway where you take a
3 circular route, you're not claiming that you have used
4 that exclusively, have you?

11:25 AM 5 A. Over what period of time?

6 Q. The last 10 years.

7 A. For most of the time that I've lived there I
8 think that I have. I mean, I haven't paid much
9 attention to it. I don't know why anyone else would
10 have used it.

11 Q. Would no one else use that to drive a car into
12 the carport, for example?

13 A. Well, the last two owners -- the original
14 owner built the carport. They had two cars. Then there
15 were two owners who did not have multiple cars. And
16 then Ms. Bryant.

17 And the two owners in between the
18 original owner and Ms. Bryant, I don't believe they used
19 the carport, and I'm not willing to say that definitely.
11:25 AM 20 But I don't think they ever used the carport, and I
21 don't think they would have any reason to go onto that
22 portion of the driveway.

23 Q. But you won't testify that you were the
24 exclusive user of that property for any relevant period
11:26 AM 25 of time, will you?

11:26 AM 1 A. I may have been. I don't know.

2 Q. You don't know.

3 MR. GARRETT: No further questions, Your
4 Honor.

11:26 AM 5 THE COURT: All right. Anything else,
6 counsel?

7 MR. NEWTON: Yeah, if I may, Your Honor,
8 just a very quick redirect.

9 **REDIRECT EXAMINATION**

11:26 AM 10 BY MR. NEWTON:

11 Q. Mr. Mishkoff, are we here only because you
12 want to remove the planters, or are we also here because
13 you want to be able to peacefully enjoy access to that
14 portion of your property?

11:26 AM 15 A. Both of those things are true.

16 Q. So is it fair to say as it currently stands,
17 that if Ms. Bryant is home, when someone is on that
18 portion of the property that there can be a potential
19 for conflict?

11:26 AM 20 A. That's been -- that's happened, yes.

21 Q. And that the police have been called multiple
22 times.

23 A. That's true.

24 Q. And is it possible the reason we're here, as
11:26 AM 25 much as anything, is because you want to be able to

1 clean your windows on that side without having to worry
2 about a verbal confrontation, at the very least, or the
3 police being called.

4 A. To refine that, I want my wife to be able to
5 do that without being confronting because that upsets
6 her a great deal.

7 MR. NEWTON: No further questions, Your
8 Honor.

9 MR. GARRETT: Nothing from us of this
10 witness. Thank you.

11 THE COURT: All right. You may step
12 down. Thank you for your testimony.

13 Counsel, is there anything else in
14 support of your application?

15 If you would please leave the exhibits.

16 THE WITNESS: Oh, I'm sorry.

17 MR. NEWTON: The only thing I would say,
18 Your Honor, is just to kind of reiterate, but in the
19 declarations we're not just going after the implied
20 easement but the express easement that's offered through
21 the CC&Rs as well, to where if you're in an affected lot
22 within the maintenance easements then you have a right
23 of access to your property.

24 And this is a clear depiction of why
25 that's so important to a subdivision like this.

11:28 AM 1 THE COURT: Mr. Garrett, anything in
2 response?

3 MR. GARRETT: We're not going to offer
4 any witnesses. I would like to just briefly address
11:28 AM 5 legal points in a closing statement, if I may.

6 THE COURT: I don't believe that's
7 necessary. I think the record here is pretty clear that
8 we do not have the imminent irreparable injury that is
9 required for temporary relief prior to the time of
11:28 AM 10 trial.

11 Everything about it seems to be a matter
12 of convenience as opposed to a matter of emergency, and
13 it just doesn't rise to a level that would support the
14 imposition of injunctive relief, which is an
11:28 AM 15 extraordinary remedy.

16 I would ask that for the record if you
17 would get those Exhibits 6 and 7, the videos, either by
18 email to the court's email address or via flash drive
19 delivered to Ms. Moses.

11:28 AM 20 Ms. Moses, will you be here the rest of
21 the week?

22 THE REPORTER: Yes.

23 THE COURT: Okay. I just wanted to
24 confirm. She's filling in for us this week, so if you
11:28 AM 25 could arrange to get that to her we would appreciate it,

11:29 AM

1 and email is always our backup.

2 Anything else on this case this
3 afternoon?

4 MR. NEWTON: No, Your Honor.

11:29 AM

5 THE COURT: Okay. All right. Then
6 counsel is excused.

7 *(Proceedings concluded)*

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1 STATE OF TEXAS)

2 COUNTY OF COLLIN)

3 I, Stephanie S. Moses, Deputy Official
4 Court Reporter in and for the 471st District Court
5 of Collin County, State of Texas, do hereby certify
6 that the above and foregoing contains a true and
7 correct transcription of all portions of evidence
8 and other proceedings requested in writing by
9 counsel for the parties to be included in this
10 volume of the Reporter's Record in the above-styled
11 and numbered cause, all of which occurred in open
12 court or in chambers and were reported by me.

13 I further certify that this Reporter's
14 Record of the proceedings truly and correctly
15 reflects the exhibits, if any, offered by the
16 respective parties.

17 I further certify that the total cost for
18 the preparation of this Reporter's Record is \$ 260.00
19 and was paid/will be paid by Hank Mishkoff.

20 WITNESS MY OFFICIAL HAND on this, the 25th day
21 of June, 2022.

22 /s/ Stephanie S. Moses
23 Stephanie S. Moses, CSR 4606
24 P.O. Box 645
25 Whitewright, Texas 75491
Telephone: 214.498.3711
Email: stephanie.moses0303@gmail.com
Expiration: 4/30/2023