

DISTRICT COURT, BOULDER COUNTY, STATE OF COLORADO
Case No. 02CV582, Division 3

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CO Boulder County District Court 20th JD

Filing Date: Aug 27 2007 1:26PM MDT

Filing ID: 16095277

Review Clerk: N/A

COMBINED RULING AND ORDER ON PENDING MOTIONS

John Ramey,
Plaintiff

E-FILED

vs.

AUG 27 2007

Mark Boslough, et al,
Defendants

This matter comes before the Court on numerous pending motions. In light of the Court's Ruling and Order on Defendants' motion for summary judgment issued contemporaneously herewith, I enter this Ruling and Order on the remaining pending motions.

1. Defendant Boslough's Motion to Dismiss for Lack of Subject Matter Jurisdiction, filed July 21, 2006

This motion is denied as moot.

2. Defendant Boslough's Request for Supplemental Ruling on Order Regarding Defendants' Motion for Determination of Law Under Rule 56(h) as to Plaintiff's Claim for Easement By Necessity and Alternative Motion for Reconsideration, filed July 26, 2006

This motion is granted, and the relief granted is contained in the Court's Ruling and Order on Defendants' motion for summary judgment issued herewith.

3. Plaintiff's Motion to Modify Order re: Testimony of Sylvia Pettern, filed Feb. 26, 2007

This motion is denied as moot.

4. Plaintiff's Motion to Reconsider Partial Summary Judgment Order Dated February 16, 2007, filed June 27, 2007

This motion is denied.

5. Plaintiff's Petition for Review of the Magistrate's Order Dated July 25, 2007 Granting Boulder County's Motion for Protective Order, and Request for Expedited Ruling, filed July 27, 2007

This motion is denied as moot.

6. Defendant Boslough's Motion for Partial Summary Judgment re: Plaintiff's 5th Claim for Relief, filed June 29, 2007

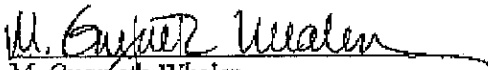
Based on the Court's ruling dated Feb. 16, 2007 and the Court's ruling issued contemporaneously herewith, all of Plaintiff's public road claims have been dismissed. Therefore, Plaintiff cannot maintain a claim under C.R.S. §43-5-301. This motion for summary judgment is granted.

Conclusion

Summary judgment is granted in favor of Defendants as to all remaining claims as set forth above. The status conference set for August 31, 2007 at 1:30 and the Court trial set on the September 10, 2007 trailing docket are vacated.

Done this 27th day of August, 2007.

By the Court:


M. Gwyneth Whalen
District Court Judge

DISTRICT COURT, BOULDER COUNTY, STATE OF COLORADO
Case No. 02CV582, Division 3

EFILED Document

CO Boulder County District Court 20th JD

Filing Date: Aug 27 2007 1:26PM MDT

Filing ID: 16095271

Case Clerk: N/A

RULING AND ORDER
RE: Defendants' Motion for Summary Judgment

John Ramey,
Plaintiff

vs.

Mark Boslough, et al,
Defendants

E-FILED

AUG 27 2007

This matter comes before the Court on Defendants' Motion for Summary Judgment filed February 8, 2007, and its Supplemental Authority filed April 9, 2007. The motion is fully briefed and ripe for determination. After carefully considering the pleadings, the record, and the applicable law, I make the following findings of fact and enter the following Ruling and Order.

I. PROCEDURAL BACKGROUND

This case has a "tortured procedural history."¹ Judge Mallard issued an order on February 16, 2007 ("Feb. 16, 2007 Order"), addressing the Defendants' motion for summary judgment as to Plaintiff's claims for Private and Public Prescriptive Easements. The Court granted summary judgment on Plaintiff's Public Road Claim based on Prescription and Plaintiff's Private Prescriptive Easement Claim, but denied summary judgment on Plaintiff's Public Road Claim based on the 1910 Deed. In August of 2007, the case was transferred to Judge Whalen.

Prior to that ruling being issued, the Defendants filed a Motion for Partial Summary Judgment on Plaintiff's Claims Pursuant to R.S. 2477, and §§43-2-201(1)(d) and 43-1-202, C.R.S. In light of the Court's Feb. 16, 2007 Order, the Defendants filed Supplemental Authority in support of their motion for partial summary judgment. Both the Motion and Supplemental Authority are fully briefed.

II. FACTS

The following undisputed facts have been exhaustively stated in myriad pleadings. The road at issue in this case is Long Gulch Road. It extends from Colorado Highway 7, south and west, through the historic town site of Balarat, and then to the southeast, where it intersects with Boulder County Road 87, which heads towards Jamestown about three miles to the south.

¹ Judge Mallard's Order dated Feb. 16, 2007, p. 2. That order provides a thorough procedural history of this case, which is incorporated herein.

Defendant Boslough owns a group of mining claims known as the Smuggler Group claims, which include the Smuggler Lode and Mill Site Claims, the Careless Boy Lode and Mill Site claims, the Wolverine Lode Claim, the Badger Boy Lode Claim, the Boreas Lode Claim, and the Highland Placer Claim. All of these claims are traversed by the disputed Long Gulch Road. Plaintiff Ramey owns a 5/8th interest in the Oro Fino Lode, in addition to six unpatented mining claims known as the Last Chance/Pine Shade Claims. Long Gulch Road and the claims surrounding it are depicted on a map attached to various pleadings. See e.g. Defs.' Mot. for Partial Sum. J. on Pl.'s Claims Pursuant to R.S. 2477, and §§43-2-201(1)(d) and 43-1-202, C.R.S., Ex. A.

Plaintiff seeks a declaratory judgment stating that Long Gulch Road is a public road, declaratory judgment stating that Plaintiff is entitled to use the entirety of Long Gulch Road by virtue of an easement by necessity, and injunctive relief and damages for obstruction of a public road.

III. APPLICABLE LEGAL STANDARD

The purpose of the summary judgment "is to permit the parties to pierce the formal allegations of the pleadings and save the time and expense connected with a trial when, as a matter of law, based on undisputed facts, one party could not prevail." *Roberts v. American Family Mut. Ins. Co.*, 144 P.3d 546, 548 (Colo. 2006). Summary judgment is a drastic remedy that is warranted only upon a clear showing that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Camacho v. Honda Motor Company, Ltd.*, 741 P.2d 1240 (Colo. 1987). In determining whether summary judgment is proper, the nonmoving party is entitled to the benefit of all favorable inferences that may reasonably be drawn from the undisputed facts, and all doubts must be resolved against the moving party. *Jones v. Dressel*, 623 P.2d 370 (Colo. 1981); *Casebolt v. Cowan*, 829 P.2d 352 (Colo. 1992).

The burden of establishing the nonexistence of a genuine issue of material fact is on the moving party. C.R.C.P. 56(c); *Continental Air Lines, Inc. v. Keenan*, 731 P.2d 708 (Colo. 1987). The movant may satisfy this burden by demonstrating that there is an absence of evidence in the record to support the nonmoving party's case. *Continental Air Lines, Inc., supra*; *Civil Service Comm'n v. Pinder*, 812 P.2d 645 (Colo. 1991). Once the movant makes a convincing showing that genuine issues of fact are lacking, the opposing party cannot rest upon the mere allegations or denials in his or her pleadings, but must demonstrate by specific facts that a controversy exists. *Sullivan v. Davis*, 474 P.2d 218 (Colo. 1970). Where the facts are so certain as not to be subject to dispute, a court is in a position to determine the issue strictly as a matter of law. *Moran v. Durland Trust Co.*, 252 P.2d 98 (Colo. 1952).

IV. MERITS

In their Motion for Summary Judgment filed February 8, 2007, Defendants sought summary judgment on Plaintiff's claims pursuant to R.S. 2477 (recodified at 43 U.S.C. §932) and C.R.S. §§ 43-2-201(1)(d) and 43-1-202. In the Reply filed March 22, 2007, Defendants argue that in light of the Court's Feb. 16, 2007 Order and subsequent discovery, Plaintiff's

public road claim based on the 1910 deed should be dismissed, in addition to Plaintiff's R.S. 2477 claim and Easement by Necessity claim.

A. The Law of the Case Doctrine

The law of the case doctrine applies to the "binding force of trial court rulings during later trial court proceedings." *In re Marriage of Buford*, 26 P.3d 550, 554 (Colo. App. 2001) (internal citations omitted). However, application of the law of the case doctrine by a trial court to its prior rulings is a discretionary rule of practice. *Id.* A trial court may modify a prior ruling if new facts, changes in the applicable law, or other persuasive circumstances warrant such a modification. *Provo v. Industrial Claim Appeals Office of State of Colo.*, 66 P.3d 138, 142 (Colo. App. 2002) *aff'd in part and rev'd in part on other grounds by Dworkin, Chambers, and Williams, P.C. v. Provo*, 81 P.3d 1053 (Colo. 2003).

B. Public Road claim based on the 1910 Deed

The Court denied summary judgment on this claim in its Feb. 16, 2007 Order, because there was a disputed issue of material fact as to whether there existed more than one deed dated April 7, 1910, and the Court could not "determine whether this 1910 deed, Exhibit G, is the same referenced by Ms. Pettem." Feb. 16, 2007 Order, p. 6.

Defendants argue that it is now clear that there is only one deed dated April 7, 1910, and that Exhibit G is the same instrument as Plaintiff's Exhibit 75, relied upon and referenced by Ms. Pettem. Defendants also provided Exhibit A, which they assert is the same deed relied upon by Ms. Pettem, but in typewritten form. Defendants argue that there is only one deed dated April 7, 1910, found at Book 324, Page 355 of the Boulder County Clerk and Recorder's records. Since the Court already ruled that Exhibit G "conveyed to Boulder County a road that is clearly not part of the Long Gulch Road at issue in this case," Defendants argue Plaintiff's public road claim based on the 1910 deed should now be dismissed.

Plaintiff acknowledges that Ms. Pettem relied upon Plaintiff's Exhibit 75; however, Plaintiff disputes that Exhibit A is the same document as Exhibit 75 and questions the authenticity of Exhibit A. Plaintiff argues that the intent of the parties must govern, and any ambiguity as to what portion of the toll road was conveyed in the deed must be resolved at trial.

Defendants' Exhibit G and Plaintiff's Exhibit 75 are clearly the same document. Although the book and page numbers on Exhibit G are cut off, and the copying of each has made the print differently sized, the content of the land conveyance is exactly the same, as are other identifying marks. For example, the number in the upper left-hand corner of each document is "19853." Furthermore, when asked during her deposition about Exhibit 83 (which is the same document as Exhibit G), Plaintiff's expert witness, Ms. Pettem, stated, "This is the conveyance of the toll road to the Boulder County." She also stated, "I believe it is one document." Dep. Sylvia Pettem, p. 69.

The real estate description conveyed in the April 7, 1910 deed is the following:

The Toll Road owned by the party of the first part commonly known as the South Fork Toll Road beginning at a point about two miles south west of Lyons,

in Section Nineteen (19) Township Three (3) North of Range Seventy (70) west of the Sixth P.M. and continuing in a south westerly direction along the south St. Vrain Creek to the junction of the South and Middle forks of the St. Vrain Streek, thence up the middle St. Vrain Creek to a point known as Stanley's Crossing in Section Four Township Two North Range Seventy-two west of the 6th P.M.

The operative words are "along the south St. Vrain Creek." This Court has already ruled that this language "conveyed to Boulder County a road that is clearly not part of the Long Gulch Road at issue in this case." Feb. 16, 2007 Order, p. 5. The Long Gulch Road and the northern route along the Long Gulch Road are south of the South St. Vrain Creek and appear to run almost perpendicular to the South St. Vrain Creek. See Defs.' Mot. for Partial Sum. J. on Pl.'s Claims Pursuant to R.S. 2477, and §§43-2-201(1)(d) and 43-1-202, C.R.S, Ex. A.

Plaintiff argues that whether or not the 1910 deed conveys a portion of Long Gulch Road at issue here turns on the intent of the parties' to the 1910 deed and suggests that there is ambiguity in the deed, which should be resolved at trial. I disagree. The language in the deed is clear. The phrase "along the south St. Vrain Creek" is not ambiguous, and the deed as a whole is not ambiguous as a matter of law. Finding no ambiguity in the deed, I need not address the intent of the parties. See *Albright v. McDermond*, 14 P.3d 318, 322 (Colo. 2000). Furthermore, the authenticity of Exhibit A is irrelevant. Given the Court's previous findings, the comparison at issue is between Plaintiff's Exhibit 75 and Defendants' Exhibit G. See Feb. 16, 2007 Order, pp. 5-6.

The previous issue of material fact as to Exhibit G has been resolved. It is now clear that Exhibit G is identical to Exhibit 75, which is the document relied upon by Ms. Pettem and the document which this Court has previously ruled did not convey Long Gulch Road at issue in this case. I affirm that finding, and therefore, grant Defendants' Motion for Summary Judgment on Plaintiff's Public Road Claim based on the 1910 Deed.²

C. R.S. 2477 Claim

Defendants argue that Plaintiff's claim under R.S. 2477 has been implicitly dismissed by the Feb. 16, 2007 Order, and by the Federal Court's order granting summary judgment in favor of the United States and this Court's January 24, 2004 Order. Should the Court find this claim to be revived, Defendants argue summary judgment is appropriate. Plaintiff argues that his claim under R.S. 2477 is still viable and opposes summary judgment on this claim.

By order dated September 5, 2006, the Court denied Defendants' motion to dismiss Plaintiff's public road claims and declined to be bound by the Court's 2004 order dismissing such claims. The Court found that there was a change in circumstances, namely the joinder of other private property owners and the adjudication of rights between the Plaintiff and the United States Forest Service in Federal District Court. See Order dated Sept. 5, 2006, p. 2. Subsequently, the Court stated that only a deed-based public road claim remained in light of the Feb. 16, 2007 Order; however, the Court did not address the R.S. 2477 claim in the Feb. 16, 2007 Order, nor did the parties brief the issue prior to the issuance of that order. Therefore,

² Because I find that there was not a conveyance from the toll road company to Boulder County in 1910, I need not address whether Boulder County abandoned the road. See Feb. 16, 2007 Order, p. 6.

Plaintiff's claim under R.S. 2477 remains, and I address Defendants' motion for summary judgment on this claim on its merits.

In 1866, Congress passed a statute, commonly known as "R.S. 2477," which granted "the right of way for the construction of highways over public lands, not reserved for public uses." Act of July 26, 1866, ch. 262, § 8, 14 Stat. 251, 253 (1866)(formerly codified at 43 U.S.C. § 932) (repealed by 43 U.S.C. § 1769). The repealing act specifically provided that it would not have the effect of terminating any right-of-way previously permitted, *i.e.*, before R.S. 2477 was repealed. *Lee v. Masner*, 45 P.3d 794, 795 (Colo. App. 2001); *Southern Utah Wilderness Alliance v. BLM*, 425 F.3d 735, 741 (10th Cir. 2005).

R.S. 2477 was unique in that "the establishment of R.S. 2477 rights of way required no administrative formalities: no entry, no application, no license, no patent, and no deed on the federal site; no formal act of public acceptance on the part of the states or localities in whom the right was vested." *Southern Utah Wilderness Alliance v. BLM*, 425 F.3d at 741.³ In adjudicating rights pursuant to R.S. 2477, both federal and state courts have long turned to "common law and state law as setting the terms of acceptance of R.S. 2477 grants." *Id.* at 765.

In Colorado, R.S. 2477 serves as "an express dedication of roads over public land where the roads were established by public use." *Lee v. Masner*, 45 P.3d at 795.

[T]he statute is an express dedication of a right of way for roads over unappropriated government lands, acceptance of which by the public results from "use by those for whom it was necessary or convenient." It is not required that "work" shall be done on such a road, or that public authorities shall take action in the premises. User is the requisite element, and it may be by any who have occasion to travel over public lands, and if the use be by only one, still it suffices.

Leach v. Manhart, 102 Colo. 129, 133, 77 P.2d 652, 653 (1938). "[S]uch use must be established before the land in question is withdrawn from the public domain or included within a reserve," *Barker v. Bd. of County Com'rs*, 49 F.Supp.2d 1203, 1214 (D. Colo. 1999); *see Korfv. Iiten*, 64 Colo. 3, 169 P. 148 (1917).

"A right of way for a public road cannot be acquired by passing over a tract of land generally, but must be confined to a reasonably definite and certain line." *Sprague v. Stead*, 56 Colo. 538, 542, 139 P. 544, 546 (Colo. 1914). The burden of proof lies on the party seeking to enforce a right of way. *Southern Utah Wilderness Alliance v. BLM*, 425 F.3d at 768.

"[A]ny land to which any claims or rights of others have attached does not fall within the designation of land on the public domain." *Barker v. Bd. of County Com'rs*, 49 F.Supp.2d at 1215. The date of the patent's issuance for a mining claim is not necessarily the date it is

³ Given the federal government's public lands policies, which encouraged settlement and the opening and development of public lands, "parties rarely had an incentive to raise or resolve potential issues while [R.S. 2477] was in effect...." *Southern Utah Wilderness Alliance v. BLM*, 425 F.3d at 741. In light of the sea change that has occurred in public land policy since 1976 when R.S. 2477 was repealed, "litigants are driven to the historical archives for documentation of matters no one had reason to document at the time," in order to litigate R.S. 2477 claims. *Id.* at 742.

removed from the public domain; it may be an earlier date. *Id.* (using the date of entry to calculate whether a public road had been established prior to that date); *see also Benson Mining & Smelting Co. v. Alta Mining & Smelting Co.*, 145 U.S. 428, 431-32 (1892) (holding that a patent, when issued, relates back to the date of the inception of the rights of the patentee in the land); *Witherspoon v. Duncan*, 71 U.S. 210, 216 (1866) (“by the act of entry and payment, the purchaser acquires a legal title”). The first step to establish a mining claim pursuant to the General Mining Law of 1872 is “entry upon the [property] for the purpose of staking the claim.” *Visintainer Sheep Co. v. Centennial Gold Corp.*, 748 P.2d 358, 360 (Colo.App. 1987).

Plaintiff presents the following facts, which for purposes of this motion I assume to be true. The Balarat Lode claim was discovered on April 18, 1876. Pl.’s Response to Defs.’ Mot. S.J., p. 3. Smuggler and Careless Boy claims were discovered May 2, 1876 and May 5, 1876, respectively. *Id.* Long Gulch Road, running from Balarat south to what is now County Road 87, was originally completed in 1877. *Id.* at 4-5. Long Gulch Road, running from Balarat north to the St. Vrain River, was completed in 1892. *Id.* at 5. In addition, the Mineral Survey Plats for the Smuggler Lode and Mile Site and the Careless Boy Lode and Mill Site are dated November 23, 1876, and December 6, 1876, respectively. Defs’ Trial Ex. L, M.

Based on Plaintiff’s own presentation of the facts, the land encompassing Long Gulch Road was removed from the public domain beginning in 1876, when claims were first discovered in the area and attendant rights attached to the land. *Barker v. Bd. of County Com’rs*, 49 F.Supp.2d at 1215; *Benson Mining & Smelting Co. v. Alta Mining & Smelting Co.*, 145 U.S. at 431-32; *Visintainer Sheep Co. v. Centennial Gold Corp.*, 748 P.2d at 360. This occurred well before Long Gulch was established as a road, which at the earliest date suggested by Plaintiff would be 1877.

Plaintiff argues that it must be that Long Gulch Road was “used” as a road prior to the first claims being discovered, by virtue of the fact that “Long Gulch was a busy place during the spring and summer of 1876,” and “prospectors were utilizing a portion of the Long Gulch Road within the heart of Long Gulch” long before the Balarat Lode was discovered in April of 1876. Plaintiff has presented no evidence to support this proposition. There is no evidence that these prospectors utilized the same “reasonably definite and certain line,” comprising the route Plaintiff claims is now Long Gulch Road. *See Sprague v. Stead*, 56 Colo. at 542, 139 P. at 546. Plaintiff’s assumption that “Long Gulch was [no doubt] a busy place during the spring and summer of 1876” is not evidence. Such general allegations are not sufficient to withstand a motion for summary judgment. *See Sullivan v. Davis*, 474 P.2d 218 (Colo. 1970).

Based on the foregoing, I grant Defendants’ Motion for Summary Judgment on this claim.

D. Plaintiff’s Public Road claims based on Colorado Statute

Plaintiff maintains that his other claims to have Long Gulch Road declared a public road under Colorado statute remain viable. Given the convoluted history of this case and for the sake of clarity, I address each statutory claim. The findings made in this order, in addition to the Court’s previous orders, dismiss all of Plaintiff’s public road claims based on Colorado statute.

C.R.S. § 43-2-201, (2006) provides in full:

(1) The following are declared to be public highways:

- (a) All roads over private lands dedicated to the public use by deed to that effect...;
- (b) All roads over private or other lands dedicated to public use by the process of law and not heretofore vacated by an order of the board of county commissioners duly entered of record in the proceedings of said board;
- (c) All roads over private lands that have been used adversely without interruption or objection on the part of the owners of such lands for twenty consecutive years;
- (d) All toll roads or portions thereof which may be purchased by the board of county commissioners of any county from the incorporators or charter holders thereof and thrown open to the public;
- (e) All roads over the public domain, whether agricultural or mineral.

The Court's Feb. 16, 2007 Order dismissed Plaintiff's public road claim based on prescription, finding that Plaintiff had failed to establish the requisite claim of right or adversity. Thus, the Court dismissed Plaintiff's claim pursuant to C.R.S. § 43-2-201(1)(c).⁴

In an Order addressing the testimony of Sylvia Pettem which accompanied the Court's Feb. 16, 2007 Order, the Court stated, "As a result of [the Feb. 16, 2007 Order], the only remaining public road issue pertains to a claim of public road based on a 1910 deed." Given the findings made above regarding the 1910 deed, Plaintiff has no basis on which to claim that Long Gulch Road is a public highway pursuant to C.R.S. § 43-2-201(1)(d) or § 43-2-201(1)(a). It is abundantly clear that the toll road and the deed that conveyed it to Boulder County in 1910 was not Long Gulch Road.

C.R.S. § 43-1-202, (2006) provides in full, "All roads and highways which are, on May 4, 1921, by law open to public traffic shall be public highways within the meaning of this part 2." The express terms of this statute require a determination of whether a public highway has been created "by law." See *Martino v. Board of County Com'rs of Pueblo County*, 360 P.2d 804 (Colo. 1961) (examining R.S. 2477 and §43-2-201 (then titled C.R.S. 120-1-1 (1953)) to determine whether the road was a "public highway"). All of Plaintiff's public road claims have been dismissed, and there is no legal basis upon which Plaintiff can sustain a claim under §43-1-202.

Plaintiff argues that requiring an independent legal basis for a claim under §43-1-202 renders the statute meaningless. However, the fact remains that all of the theories upon which Plaintiff has based his argument that Long Gulch Road is a public highway have been rejected. Therefore, Plaintiff simply cannot show that Long Gulch Road was open to public traffic "by

⁴ Plaintiff, at one point, acknowledges that the Court's Feb. 16, 2007 Order "addresses" Plaintiff's claims under "§ 43-2-201(1)(c), as well as the 'deed-based' claim which is premised upon § 43-2-201(1)(d)." Pl. Response to Defs.' Mot. Partial Sum. J. Re: R.S. 2477, §43-2-201(1)(d), and §43-1-202 C.R.S., p. 2 n. 2. However, Plaintiff does not acknowledge that the Court dismissed the claim under §43-2-201(1)(c) in its Feb. 16, 2007 Order.

law" and therefore a public highway pursuant to §43-1-202. Any other reading would ignore the statute's plain language.

For the foregoing reasons and to the extent that such claims have not already been dismissed, I grant Defendants' motion for summary judgment on Plaintiff's claims pursuant to C.R.S. § 43-2-201 and § 43-1-202.

E. Easement by Necessity

Plaintiff claims he has the right to access the entire length of Long Gulch Road by virtue of an easement by necessity.

"Easements by prior use, sometimes referred to as easements of necessity, can be implied when a property owner has used one part of a single piece of property for the benefit of another part of the property and then divides and conveys the property." *Lobato v. Taylor*, 71 P.3d 938, 972 (Colo. 2002). "In those circumstances, the new possessor of the previously benefited portion of the land may also possess an easement over the previously burdened part of the property." *Id.*

"To establish an implied easement of necessity for access to land, three requirements must be met: (1) there must be unity of ownership of the entire tract prior to division; (2) the necessity for the easement must exist at the time of severance; and (3) the necessity for the particular easement must be great." *Thompson v. Whinnery*, 895 P.2d 537, 540 (Colo. 1995). The burden of proving the existence of an implied easement of necessity rests upon the person claiming the easement. *Id.* "While absolute physical impossibility of reaching the alleged dominant estate is not a requisite, an easement by implication is not sanctioned if available alternatives offering reasonable means of ingress and egress exist." *LaSatz v. Dehotels*, 757 P.2d 1090, 1092 (Colo. App. 1988).

Plaintiff has statutory access to his land, specifically the Oro Fino Lode, through the Alaska National Interest Land Conservation Act ("ANILCA"), 16 U.S.C. §3210, *et seq.* and 36 C.F.R. §251.50(a)(2004). *See* Federal Court Order, May 20, 2005, p. 5. It is further undisputed that Plaintiff had not applied for a special use permit as required under the statutory regulations. *See Id.* In addition, it is undisputed that Plaintiff has access to the unpatented claims, Last Chance and Pine Shade claims. *See Id.* at 7. I adopt these findings made by the Federal District Court.

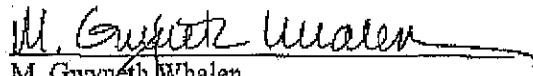
It is undisputed that Plaintiff can reach his lands by available alternatives. Although it may not be his preferred access route, Plaintiff has access, and he simply cannot show the requisite necessity in order for the Court to sanction a claim for an easement by necessity. *See LaSatz v. Dehotels*, 757 P.2d at 1092. I, therefore, grant Defendants' motion for summary judgment on this claim.

V. CONCLUSION

Based on the foregoing, I hereby GRANT Defendants' motion for summary judgment on Plaintiff's public road claim based on the 1910 deed, Plaintiff's R.S. 2477 claim, Plaintiff's claims pursuant to C.R.S. § 43-2-201 and § 43-1-202, and Plaintiff's claim for an easement by necessity.

Done this 27th day of August, 2007.

By the Court:


M. Gwyneth Whalen
District Court Judge