

VERMONT SUPERIOR COURT
Washington Unit
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Montpelier VT 05602
802-828-2091
www.vermontjudiciary.org



CIVIL DIVISION
Case No. 25-CV-05488

Terry Ostrout v. Walt Krukowski

ENTRY REGARDING MOTION

Title: Motion for Summary Judgment (Motion: 4)
Filer: Walt Krukowski
Filed Date: May 27, 2026

The motion is GRANTED IN PART and DENIED IN PART.

Defendant Walt Krukowski has filed a motion for summary judgment in the present matter. Plaintiff Terry Ostrout has opposed this motion. Both parties are self-represented, and the filings do not strictly comply with the standards for a motion for summary judgment under Rule 56. V.R.C.P. 56.

Nature of the Claim

Plaintiff has brought the present suit pursuant to 19 V.S.A. § 2702, which permits a private party to recover the proportional costs for maintaining a common road. “In the absence of an express agreement or requirement governing maintenance of a private road, when more than one person enjoys a common benefit from a private road each person shall contribute rateably to the cost of maintaining the private road.” 19 V.S.A. § 2702.

The key questions in such an action often center on one or more of the following issues:

- 1) What portion of the road serves each household? How many households are served by the road?
- 2) Is use of the road limited to the owners or do others use the road?
- 3) Is a pro rata division reasonable, or are there other factors, such as use and frequency, that affect how much costs should be attributable to each household?
- 4) Did the parties agree on the repairs and maintenance prior to the work? Was there any agreement of consensus?
- 5) Were the repairs reasonable and necessary and of common benefit to maintain the roadway?
- 6) Has one party, by performing maintenance or repairs rendered a benefit on another party, that the other party has accepted, and for which it would be unfair for them to keep without providing some compensation.

Moyers v. Poon, 2021 VT 46, ¶ 38; see also *Rawley v. Heymann*, 2023 VT 64, ¶ 19 (Cohen, J. dissenting) (describing the analysis under Section 2702 as articulated in *Moyers*); *Hubbard v. Bolieau*, 144 Vt. 373, 375 (1984) (“This Court has long recognized the equitable principle that when several persons enjoy a common benefit, all must contribute rateably to the discharge of the burdens incident to the existence of the benefit.”) (internal quotations and citations omitted).

In the present case, Plaintiff Ostrout seeks compensation for a variety of expenses that she alleges to have incurred to maintain and repair a common road that runs to both her property and Defendant Krukowski’s. From the pleadings and motions, there are several disputed issues of fact.

First, neither party has submitted sufficient details about the road, or the layout of the properties, for the Court to make any determination about the assignable use or even the specific number of properties served by the road. Plaintiff has made a claim that Defendant is obligated to make contributions of up to 40%. Defendant disputes this percentage. It is not clear what Plaintiff’s basis for this 40% number is. On the other hand, Defendant contends that he and his family do not use the road in question and use another road and point of access for his property. He also contends that he did not use the property for extended periods of time, including the winter of 2022 to 2023 when Defendant claims that neither he, nor his family, lived at the property.

The problem with Defendant’s position is that while evidence that he only uses the road on a limited basis may reduce his contribution, it does not necessarily excuse it entirely. As any determination of contribution is an equitable analysis of unjust enrichment, the Court must look at the entirety of the circumstances. *Beldock v. VWSD, LLC*, 2023 VT 35, ¶ 81.

Second, there is the issue of notice, there is a dispute between the parties as to when and how Plaintiff notified Defendant of the repairs and maintenance costs for the road and whether Defendant had a chance to review them or forfeited such an opportunity. The Court finds that these facts are not in dispute as they rely on each party’s testimony and that a true determination necessitates an understanding of exactly what was said and when.

Third, there is a factual dispute about the nature of the work done, both in its necessity and whether the benefit extended to both properties. For example, Defendant’s exhibit 4 indicates that a portion of the repairs sought arise from work that only benefited Plaintiff as it involved portions of the road that Plaintiff uses. Again, this may be true, and it may be a valid defense, but given the limited facts before the Court, the dispute between the parties, and the equitable nature of the determination, the Court finds that summary judgment is inappropriate at this time.

Summary Judgment is only appropriate where the moving party has demonstrated that there are no genuine issues of material fact and that he is entitled to judgment as a matter of law. *Tilson v. Lane*, 2015 VT 121, ¶ 7. In this case, the Court is confronted with a patchwork of facts that at best frame the dispute between the parties, provide a clear picture of the basis for Defendant’s position but ultimately do not provide sufficient undisputed material facts on which

to basis either a complete judgment or a complete dismissal. To get to the point that either party seeks, the Court will have to engage in factfinding, which puts this decision beyond the realm of summary judgment and requires the Court to move forward to a bench trial. *Rawley*, 2023 VT 64, at ¶ 15.

For these reasons, Defendant's general motion for summary judgment is **Denied**. The present action shall be set for trial.

Damages Issues

Notwithstanding the Court's denial of Defendant's general motion for summary judgment, Defendant makes two valid points in his motion that the Court regarding damages that warrant separate consideration and partial judgment.

The first is that 19 V.S.A. § 2702 does not encompass emotional damages or pain and suffering. This is correct, and such damages or testimony about such is not allowed in this claim. To the extent that Plaintiff seeks such damages, the Court **Grants** Defendant's motion on emotional damages. These portions of Plaintiff's claims are **Dismissed** as a matter of law from the present action.

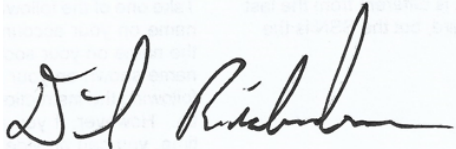
The second is that Plaintiff has brought forth evidence of his own maintenance efforts and argues that they should be considered as part of this action. The Court agrees. Maintenance performed by Defendant is equally valid as maintenance performed by Plaintiff, and the Court will consider evidence of work done by or for both parties when considering the evidence in this case, and the Court will credit such work to the extent that it finds such work was reasonable and for the common good of the shared roadway.

ORDER

Based on the foregoing, Defendant Krukowski's motion for summary judgment is **Denied in Part and Granted in Part**. The portion of the motion seeking to dismiss Plaintiff's claims in total is denied, but Plaintiff's claims for emotional damages and pain and suffering are **dismissed**.

Finally, Defendant may present, and the Court will consider, any evidence that he has, within the relevant timeframes under 12 V.S.A. § 511 (from December 2019 to present), of any work he has done or paid for to maintain or repair commonly used portions of the shared road.

Electronically signed on 7/10/2026 11:15 AM pursuant to V.R.E.F. 9(d)

A handwritten signature in black ink, appearing to read "D. Richardson", is written over a light blue rectangular background.

Daniel Richardson
Superior Court Judge