

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 26-CV-02756

Matthew Lyons, et al v. Student Transportation of Vermont LLC

ENTRY REGARDING MOTION

Title: Motion for Preliminary Injunction (Motion: 3)
Filer: Matthew Lyons
Filed Date: September 18, 2026

I. Procedural Posture & Background

Plaintiffs seek injunctive relief, stated as “restraining Defendant Student Transportation of Vermont, Inc. ("STV") — and only STV, its officers, employees, drivers, agents, and those acting in concert with it in its corporate capacity — from operating, staging, storing, or otherwise using any STV vehicle or equipment on the private road known as Makala’s Way, pending final judgment.” See *Mot. for Preliminary Injunction* [hereinafter, *Pl. ’s Mot.*], filed Sep. 18, 2026.

Defendant filed a memorandum in opposition, highlighting that its employee, Christopher Luce, has voluntarily ceased operation of the school bus on Makala’s Way. Defendant asserts that Plaintiffs have failed to satisfy their burden under V.R.C.P. 65(b) and that voluntary abatement has rendered the controversy moot. A reply was filed by Plaintiffs, largely reiterating the arguments made previously and commenting on the assertions made by Defendant in the memorandum in opposition.

To summarize the controversy, the litigants own neighboring properties on Makala’s Way, a private road in East Thetford, Vermont. Makala’s Way is a dead-end road that runs west from Latham Road. The properties served are adjacent to Interstate 91’s northbound lane. The general facts relevant to the issue of a preliminary injunction are effectively undisputed.

Mr. Luce, like Plaintiffs, has a deeded right of way to access his property. Mr. Luce is a bus driver and due to his medical condition and age has on multiple occasions parked the bus overnight at his residence instead of returning it to a depot in White River Junction, Vermont. Plaintiffs’ primary complaint is the noise associated with the bus backing up the right of way to Mr. Luce’s residence and the disruption this causes to their peace and quiet.

Defendant asserts, as supported by affidavit, that Mr. Luce has medical issues that lead him to take the bus to his home instead of to the depot following afterschool activities or school sports

events. Based on recent events, Mr. Luce reports that he no longer brings the bus to his residence on Makala's Way and has made alternate arrangements.

II. Discussion

"An injunction is an extraordinary remedy that will not be routinely granted unless the right to relief is clear." *Comm. to Save Bishop's House v. Med. Ctr. Hosp. of Vt.*, 136 Vt. 213, 218 (1978); see also *Vt. Div. of State Bldgs. v. Town of Castleton Bd. of Adjustment*, 138 Vt. 250, 256 (1980).

Further, "A preliminary injunction is an extraordinary remedy never awarded as of right." *Taylor v. Town of Cabot*, 205 Vt. 586, 596 (2017) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008)). In considering the request under V.R.C.P. 65, "the court must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Taylor*, 205 Vt. at 596. (quotation omitted). The moving party has the burden of establishing the relevant factors, specifically, "(1) the threat of irreparable harm to the movant; (2) the potential harm to the other parties; (3) the likelihood of success on the merits; and (4) the public interest." *Id.* (citing *In re J.G.*, 160 Vt. 250, 255 n.2 (1993)).

The balancing test articulated by the Vermont Supreme Court is designed to be "sufficiently flexible to allow for a preliminary injunction in cases in which the court cannot definitively conclude that the movant is likely to prevail on the merits, but the balance of other factors tips strongly in favor of an injunction." *Id.* at 255 n.3. The court considers each of the factors below.

A. Likelihood of success

A party seeking a preliminary injunction is "not required to prove his case in full," and the court's findings of fact and conclusions of law "are not binding at trial on the merits." *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981) (citations omitted); see also *Gardner v. Jefferys*, 178 Vt. 594, 598 (2005) (trial court's interpretation of restrictive covenant following limited hearing on motion for temporary injunction does not bind court's later interpretation when record is fully developed).

Defendant's answer has raised multiple colorable defenses to Plaintiffs' complaint. Defendant is correct that there is no private cause of action based on any alleged violations of Vermont's criminal statutes, i.e. 13 V.S.A. §§ 1022, 1026.¹ Further, the complaint does not allege or cite to any authority (statutory or local ordinance) regulating noise or vehicular traffic on private right of ways, nor has any deed been presented showing that Mr. Luce's use and access of the right of way in a work vehicle owned by Defendant is impermissible.

¹ Additionally, this court has previously concluded that 13 V.S.A. § 1022 was revoked by implication upon the amendment of 13 V.S.A. § 1026 to add an "unreasonable noise" theory. See *Entry Order, State of Vermont v. David Sharron*, Case No. 25-CR-00806, Thibault, Supr. J., dated Apr. 7, 2025.

Any restrictions on the right of way or deeded rights relating to access of Mr. Luce's property will be assessed the language of such documents, however, no documents have been referenced or are offered by Plaintiffs. Additionally,

Vermont law is clear that "a [dominant] estate must use a right-of-way in a manner consistent with the use contemplated at the time of its creation, and it may not use it in a way that materially increases the burden on the servient estate." *Rowe v. Lavanway*, 2006 VT 47, ¶ 22, 180 Vt. 505, 904 A.2d 78 (mem.). However, "[t]he manner, frequency, and intensity of the use may change over time to take advantage of developments in technology and to accommodate normal development of the dominant estate or enterprise benefited by the servitude." *Id.* ¶ 23 (quoting Restatement (Third) of Property, Servitudes § 4.10).

Roy v. Woodstock Cmty. Tr., Inc., 195 Vt. 427, 457 (2014).

Here, the court cannot conclude that Plaintiffs' complaint is sufficiently well developed to conclude that there is a clear likelihood of success. Rather, the court views the defenses raised as fairly compelling, especially when coupled with the absence of evidence to show any deed or covenant that would preclude Mr. Luce from operating a vehicle owned by Defendant on the right of way for his needs or convenience relative to his employment. Put another way, Plaintiffs propose through injunctive relief to not only limit use of the shared right of way but to infringe upon Mr. Luce's use and enjoyment of his property. There is no indication that Defendant has a policy or directive against an employee taking a work vehicle home when convenient versus returning it to a designated depot.

B. Irreparable harm

"A preliminary injunction will usually be denied 'if it appears that the applicant has an adequate alternate remedy in the form of money damages or other relief.'" *Taylor*, 205 Vt. at 605 (quoting C. Wright & A. Miller, Federal Practice & Procedure § 2948.1 (3d ed. 2017)). Some courts have suggested that irreparable harm is the "single most important" factor when determining whether a court should grant injunctive relief. See, e.g., *Wool v. Vermont Department of Corrections*, No. 2:11-cv-188, 2011 WL 6740540, *3 (D. Vt. Nov. 15, 2011) (Conroy, Mag. J.) (citation omitted), report and recommendation adopted by 2011 WL 6748991 (D. Vt. Dec. 22, 2011).

To establish irreparable harm, a plaintiff "must show that there is a continuing harm which cannot be adequately redressed by final relief on the merits and for which money damages cannot provide adequate compensation." Further, a plaintiff must show that the harm is "actual and imminent, not remote or speculative." *Kamerling v. Massanari*, 295 F.3d 206, 214 (2d Cir. 2002) (quotation omitted). When "it appears that the applicant has an adequate alternate remedy in the form of money damages or other relief" the request for a preliminary injunction will ordinarily be denied. *Taylor, supra* (citing C. Wright & A. Miller, *Fed. Prac. & Proc.* § 2948.1 (3d ed. 2017)). Additionally, as a predicate for injunctive relief a moving party must show "that it exhausted its administrative remedies and that it has no adequate legal remedy." *In re Investigation Into Gen. Ord. No. 45*, 193 Vt. 676, 678 (2013) (citing *Smith v. Highway Bd.*, 117

Vt. 343, 349 (1952).

While the court declines to find that this controversy is moot based on the voluntary abatement of the conduct by Defendant and/or its agent, Mr. Luce, this information weighs heavily against a finding of irreparable or continuing harm. As the Supreme Court has noted:

Injunctions are designed to deter injurious conduct; thus relief will not be granted if the conduct has been discontinued, i.e., if the case is moot. 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure: Civil* § 2942, at 47–48 (2d ed.1995) (citing cases). Because the court's inquiry in the nuisance context is heavily fact-bound, courts must be cautious about issuing injunctions where changes in the circumstances giving rise to the alleged nuisance are likely to occur. See *Trickett v. Ochs*, 2003 VT 91, ¶ 37, 176 Vt. 89, 838 A.2d 66 (“In determining whether a land use of a lawful business constitutes a nuisance, courts must consider both the extent of the interference and the reasonableness of the challenged activities in light of the particular circumstances of the case.”) (citation omitted); *Winget v. Winn–Dixie Stores, Inc.*, 242 S.C. 152, 130 S.E.2d 363, 367 (S.C.1963) (“Whether a particular use of property is reasonable and whether such use constitutes a nuisance depends largely upon the facts and no definite rule can be laid down for the determination of the question.”).

Wild v. Brooks, 177 Vt. 171, 175 (2004).

Initiation of this litigation and subsequent confrontations between at least one Plaintiff and Mr. Luce have led to abatement of the allegedly offensive behavior. The voluntary cessation of behavior does not, however, render the controversy moot:

In *United States v. Concentrated Phosphate Export Ass'n*, 393 U.S. 199 (1968), the Supreme Court explained that “[m]ere voluntary cessation of allegedly illegal conduct does not moot a case; if it did, the courts would be compelled to leave ‘[t]he defendant free ... to return to his old ways.’ ” *Id.* at 203. The Court continued, however, by noting that “[a] case might become moot if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.” *Id.*; see also *W.T. Grant Co.*, 345 U.S. at 633, 73 S.Ct. at 897–98 (case moot if defendant meets heavy burden of showing there is no reasonable expectation that wrong will be repeated).

All Cycle, Inc. v. Chittenden Solid Waste Dist., 164 Vt. 428, 432–33 (1995). The current circumstances fall in a middle ground where the risk of irreparable harm is substantially mitigated and would not support injunctive relief, while the controversy itself is not necessarily resolved because there is insufficient information or evidence to show that it is not “absolutely clear” the conduct will not resume. See also *In re Durkee*, 2017 VT 49, ¶ 12, 205 Vt. 11 (explaining exceptions to mootness doctrine).

C. Potential harm to other parties / balance of equities

Plaintiffs have not provided any specific articulation of harm to third parties beyond those alleged to themselves. As noted above, notwithstanding voluntary abatement, it is questionable whether an adjoining land owner or shared owner of a private road/right of way may restrict reasonable economic activity or access of another who is entitled to the use and benefit of the right of way by deed. Further, while the back up sensor of a bus may be loud, the proximity of all parties to a major interstate highway strongly suggests that this is a neighborhood impacted by other sound pollution that is beyond any of the parties control and that vehicular noise at odd hours is not an unusual event.

D. Public interest

Finally, the Court must consider both the “public interest,” and “the effect on each party of the granting or withholding of the requested relief.” *Taylor, supra* (citation omitted). Other than potential precedential value of any decision, there is minimal public interest or stakes involved here.

III. Order of the Court

Based on the foregoing, Plaintiffs’ motion for a preliminary injunction is DENIED.

So ordered.

Electronically signed on Thursday, October 1, 2026 pursuant to V.R.E.F. 9(d)



Rory T. Thibault
Superior Court Judge