

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 3 2018

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

KING COUNTY,

Plaintiff-Appellee,

v.

CITY OF SAMMAMISH,

Defendant-Appellant.

No. 17-35642

D.C. No. 2:17-cv-00921-JCC

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
John C. Coughenour, District Judge, Presiding

Argued and Submitted July 12, 2018
Seattle, Washington

Before: CLIFTON and NGUYEN, Circuit Judges, and RAKOFF,** Senior District Judge.

This over-litigated case¹ concerns the placement of stop signs at the points

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Jed S. Rakoff, Senior United States District Judge for the Southern District of New York, sitting by designation.

¹ The Court suggested that the parties mediate the case with the aid of the Court's mediation program, but neither side accepted the suggestion.

where a recreational trail that plaintiff-appellee King County (the “County”) is developing in a former railroad corridor intersects with two public roads for which defendant-appellant Sammamish City (the “City”) has easements. The County and the City disagree as to whether safety concerns dictate that the stop signs should face trail users (walkers and bikers) or automobile traffic. When the City sought to condition a construction permit on the County’s giving the cars the right of way, the County took the position that it did not need that permit, withdrew its application, and proceeded with construction.

After the City indicated that it would issue a stop-work order if the County continued construction without the permit, the County filed an action seeking a declaratory judgment that the City’s efforts to interfere with its construction violated state and federal law. The City thereupon issued a stop-work order at the construction site. The County moved for a preliminary injunction, which the district court granted and the City now appeals.

The preliminary injunction provided that:

1. King County is authorized to resume construction of South Segment A, including pavement and construction of the intersections with 206th Avenue SE and SE 33rd Street; and
2. The City shall not take any additional actions to impede or delay King County’s construction of the intersections at 206th Avenue SE and SE 33rd Street, including any attempts to orient the stop signs toward trail users.

By its plain terms, the injunction applies only to the period of construction, and King County has now completed construction of the intersections. Accordingly, the appeal must be dismissed as moot. This dismissal is without prejudice, however, to the County's continuing to litigate its claims before the district court, including by seeking to enjoin any effort by the City to relocate the stop signs to give car traffic the right of way over walkers and bikers.

DISMISSED.