

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT PALMER

FRIENDS OF BENKA LAKE, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JAN BRUNZ, and BRITTA BRUNZ, )  
 )  
 Defendant. )  
 )  
 \_\_\_\_\_ )  
 JAN BRUNZ, and BRITTA BRUNZ, )  
 )  
 Counterclaim Plaintiff, )  
 )  
 vs. )  
 )  
 FRIENDS OF BENKA LAKE, )  
 )  
 Counterclaim Defendant, )  
 and )  
 )  
 STATE OF ALASKA; et al., )  
 )  
 Third-Party Defendant(s). )  
 \_\_\_\_\_ )

Case No. 3PA-23-02473 CI

**ORDER GRANTING STATE OF ALASKA’S MOTION FOR  
INJUNCTIVE RELIEF**

On March 27, 2024, the State filed *State of Alaska's Motion for Injunctive Relief*, seeking preliminary injunctive relief to allow immediate access to Benka Lake via Lakeview Street. On April 12, 2024, the Friends of Benka Lake filed *Friends of Benka Lake's Joinder in State of Alaska's Motion for Injunctive Relief*, joining the State in asking this court to order the removal of the fence erected by the Brunzes across Lakeview Street.

On April 24, 2024, the Brunzes filed *Combine(d) Responses*, which addressed State's *Motion for Injunctive Relief*. In their *Responses*, the Brunzes make numerous arguments, including the assertion that there are no grounds for any preliminary injunctions. An evidentiary hearing on State's *Motion* was held on May 23, 2024 with all parties involved. After considering this motion practice and the evidence presented, this court hereby GRANTS *State of Alaska's Motion for Injunctive Relief*.

### BALANCE OF HARDSHIPS

The applicable test in this case is the “balance of hardships” test.<sup>1</sup> This test provides that a preliminary injunction may be granted if “(1) the [movant] must be faced with irreparable harm; (2) the opposing party must be adequately protected; and (3) the [movant] must raise serious and substantial questions going to the merits of the case; that is, the issues raised cannot be frivolous or obviously without merit.”<sup>2</sup>

The State and Friends of Benka Lake provided substantial evidence of the irreparable harm faced by the parties as a result of the fence in question. This included testimony at the evidentiary hearing by multiple members of Friends of Benka Lake about their inability to access the lake, and the harm that entailed. Especially concerning was

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<sup>1</sup> In accordance with *Alsworth v. Seybert*, 323 P.3d 47, 54 (Alaska 2014), this court could use either the “balance of hardships” test or the “probable success on the merits” test. Since this court finds that movant has obtained a preliminary injunction based on the “balance of the hardships” test, analysis according to the “probable success on the merits” test is not necessary at this time.

<sup>2</sup> *State v Kluti Kaah Native Village of Copper Center*, 831 P.2d 1270, 1273 (Alaska 1992).

testimony by individuals who can only access their property by boat.<sup>3</sup> The State also submitted multiple affidavits that spoke directly to the irreparable harm caused by the fence erected by the Brunzes. This included an affidavit by a Project Coordinator for the Sport Fish Division of the Alaska Department of Fish and Game stating that the Department would be unable to stock the lake with fish without access to Benka Lake via Lakeview Street.<sup>4</sup> This also included a letter from the Talkeetna Fire Chief that Benka Lake access via Lakeview Street was used by the Fire Department as a Water Fill site before the fence was erected, but now can no longer be used.<sup>5</sup> Based on these examples and the other evidence presented, this court finds that the movants are faced with irreparable harm.

Although the Brunzes raise some arguments about the necessity of the fence, this court finds that the Brunzes can be adequately protected without the fence. The Brunzes allude to concerns about trespassing, defecation, loose dogs, and conduct that might endanger their property. However, despite voluminous filings and a lengthy evidentiary hearing, the Brunzes provided no evidence to this court of any conduct that occurred before the fence was put up on the property in question. Even so, the opposing party must be adequately protected, and so this court adopts the conditions suggested by the State in their *[Proposed] Order Granting Injunctive Relief*.

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<sup>3</sup> The Brunzes asserted the possibility of permissive access to the lake for certain individuals, but this court finds this assertion to be unsatisfactory.

<sup>4</sup> Friends of Benka Lake Exhibit I.

<sup>5</sup> Friends of Benka Lake Exhibit BB.

More specifically, this court ORDERS that:

Until the case is finally resolved, plaintiffs Friends of Benka Lake and third-party defendants Hannah Rosamund and Evan Memoli, together with all of their individual and collective, agents, servants, members and those persons in active concert with them, are enjoined from taking action or engaging in activities inconsistent with lake access, including but not limited to:

- a. Loitering;
- b. Camping;
- c. Dog walking, including off leash dogs;
- d. Fires; and
- e. Any other activities inconsistent with peaceful and non-injurious ingress and egress to Benka Lake.

In addition, this court notes that the Brunzes are within their rights as property owners to have fence built on either side of Lakeview Street down to the water line to protect their property. However, such a fence cannot obstruct peaceful and non-injurious ingress and egress to Benka Lake in any way.

As to the third element of the “balance of hardships” test, the issue of public access to Benka Lake is not only a serious and substantial question, it is the central question of this case. While this court is not making a determination on the merits at this point, it is clear that the argument and evidence presented by the State and Friends of Benka Lake are not frivolous.

CONCLUSION

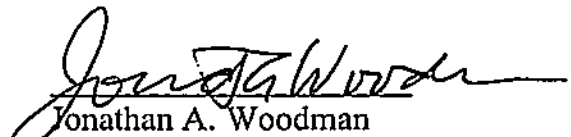
In conclusion, this court finds that the State of Alaska, along with the Friends of Benka Lake, have established irreparable harm in accordance with the balance of hardships test. (1) The movants are faced with the irreparable harm of being unable to adequately access Benka Lake. (2) The Brunz can be adequately protected. (3) The movants have raised serious and substantial questions going to the merits of the case.

Therefore, this court GRANTS *State of Alaska's Motion for Injunctive Relief*, and the Brunzes are ORDERED to remove the fence from Lakeview Street no later than 72 hours from the issuance of this order. Plaintiffs, third-party defendants, and the public are enjoined from loitering, camping, dog walking, fires, and any other activities inconsistent with peaceful and non-injurious ingress and egress to Benka Lake. Besides these conditions, the public is to be allowed access to Benka Lake via Lakeview Street in the same manner as they were before the fence was put in place.

DATED at Palmer, Alaska, on May 31, 2024

I certify that on 5/31/2024  
a copy of this document was sent to  
 CSSD     Attorney(s) of record  
 Plaintiff     Defendant     Other  
At the address(es) of record:  
Rec'd Jnl. 72  
Deputy Clerk

Kramer  
Weidner  
Brennan  
Burke  
Michalske

  
Jonathan A. Woodman  
Superior Court Judge