

FILED

JUL 02 2021

ANGIE SPARKS, Clerk of District Court
By: *Angie Sparks* Deputy Clerk

MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

TOM WINTER AND BARBARA
BESSETTE,

Plaintiffs,

v.

THE STATE OF MONTANA, BY AND
THROUGH GREG GIANFORTE, IN
HIS OFFICIAL CAPACITY AS
GOVERNOR OF MONTANA,

Defendant.

Cause No.: BDV-2021-699

**ORDER
DENYING PLAINTIFF'S
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND SETTING
SHOW CAUSE HEARING
ON PLAINTIFF'S PRELIMINARY
INJUNCTION REQUEST**

On June 30, 2021, Tom Winter (Winter) and Barbara Bessette (Bessette) filed an *ex parte* motion for a temporary restraining order (TRO). On June 30, 2021, Montana filed its response in opposition to Winter and Bessette's TRO request. On July 1, 2021, they filed their reply brief.

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1 Under Montana law, the purpose of a temporary restraining order
2 is to “preserve the status quo until a hearing can be held to determine whether an
3 injunction should be granted.” *Montana Tavern Ass’n v. State*, 224 Mont. 258,
4 264, 729 P.2d 1310, 1315 (Mont. 1986). Since Winter and Besette gave notice
5 of their TRO request to Montana, a “court or judge may enjoin the adverse party,
6 until the hearing and decision of the application, by an order which is called a
7 temporary restraining order.” Mont. Code Ann. § 27-19-314 (2019) (emphasis
8 added). Such an order, however, should be issued only if the threatened injury is
9 imminent and if delay would cause immediate and irreparable injury to the
10 applicant.

11 Having reviewed the TRO motion, the parties’ respective
12 briefs and all other pleadings in this matter, the Court concludes that delaying this
13 matter until a hearing can be held on Winter and Besette’s preliminary
14 injunction request would not cause immediate and irreparable injury to Winter
15 and Besette. Moreover, at this juncture, having reviewed *Brown v. Gianforte*,
16 2021 MT 149, 404 Mont. 269, _____ P.3d _____, the Court is genuinely
17 concerned whether Winter and Besette have established a legitimate cause of
18 action or that they are likely to succeed on the merits of their claims.

19 Accordingly,

20 **IT IS HEREBY ORDERED** that Winter and Besette’s TRO
21 motion is, and must be, **DENIED**.

22 **IT IS FURTHER ORDERED** that the parties shall appear in
23 Court on **July 15, 2021 at 2:30 p.m.**, and Montana shall show cause, if any it
24 has, why Winter and Besette’s preliminary injunction request should not be

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1 granted. In the event Montana fails to appear, an order shall be forthwith issued,
2 granting Winter and Bessette's preliminary injunction.

3 DATED this 2nd day of July 2021.

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6 MICHAEL F. McMAHON
7 District Court Judge

8 cc: E. Lars Phillips, (via email: lphillips@lawmt.com)
9 David Dewhirst, (via email to: david.dewhirst@mt.gov)
10 J. Stuart Segrest, (via email to: ssegrest@mt.gov)
11 Aislinn Brown, (via email to: Aislinn.brown@mt.gov)

12 MFm/tm/BDV-2021-699 Winter and Bessette v. State of Montana - Order Denying Plaintiff's Application for Temporary Restraining Order
13 and Setting Show Cause Hearing on Plaintiff's Preliminary Injunction Request.doc
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