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# Baseline Farms Two, LLP v. Hennings, 26 P.3d 1209 (Colo. Ct. App. 2001)

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**Baseline Farms Two, LLP v. Hennings, 26 P.3d 1209 (Colo. Ct. App. 2001)** (holding no immediate and irreparable injury was shown, and, thus, the motion for preliminary injunction failed).

Baseline Farms Two, LLP ("Baseline Farms") appealed to Adams County District Court to contest the dismissal of its motion for preliminary injunction against Steven and Chris Hennings ("Hennings"). Baseline Farms sought to bar the Hennings from discharging wastewater onto their property. Baseline Farms sued for slander of title, trespass, improper lien, and nuisance abatement.

The Hennings owned a campground across the street from the Baseline Farms property. Developing Equities Group ("DEG") sought to develop the Baseline Farms property into a residential area. The Hennings' campground had a licensed wastewater treatment facility that flowed underneath the street and onto the land owned by Baseline Farms. The Hennings claimed a prescriptive easement allowed their wastewater to flow through the ditch on Baseline Farms' property. The predecessors of both properties recognized the easement, and the Hennings recorded it in 1998. Baseline Farms claimed the Hennings easement must be revoked due to the health hazard posed by the Hennings' wastewater, and the fact that the wastewater interfered with Baseline Farms' use of their property.

Baseline Farms introduced expert testimony from an environmental engineer to illustrate the need for a preliminary injunction. The expert testified that on three days on which the water was tested, it appeared to be standing still, and was in excess of permitted levels of pollutants. In particular, the expert testified the fecal coliform count was consistently much higher than allowed under Colorado Department of Public Health and Environment ("CDPHE") standards.

On cross examination the expert admitted that with the aid of ground and surface water, the water in question could be put into motion. Also, the expert admitted, since CDPHE standards are to be measured over thirty day averages, to characterize the quality levels here based on three days of data would be inaccurate. Finally, the expert admitted contaminants might be entering the ditch from other sources.

The Hennings' cross-examination of Baseline Farms' expert helped establish the testimony as inconclusive as to the correct operation of the wastewater treatment plant. The Hennings also pointed out Baseline Farms refused their request to enter Baseline Farms' land to clean out the ditch, which Baseline Farms had never done in the ten years it has owned the property. Baseline Farms also revealed that no impact on DEG's plans for development would result for at least one year.

Following the presentation of Henning's evidence, the court granted their motion to dismiss Baseline Farm's case. The court held Baseline Farms had failed to show a real, immediate, and irreparable

injury. Baseline Farms asserted this legal standard was inapplicable where private parties were acting as private attorneys to enforce state water and health control standards.

The court disagreed, holding that the applicable water quality statutes, Colo. Rev. Stat. §§ 25-8-611 and 25-8-612, did not specifically dispense with the irreparable injury requirement and that this case did not involve an action undertaken by a government agency pursuant to a special statutory procedure. The articles here were not intended to create new rights or to enlarge existing private rights. The provisions of the articles also did not authorize injunctions or create a private cause of action to proceed in the public interest. The articles did recognize, however, that no private rights have been lost by enactment of the Water Quality Control Act, and water violation determination should not benefit anyone other than the state. Through this statutory analysis, it was clear that based on the Colorado Rules of Civil Procedure, there must be a showing of a real, irreparable injury in order to support a preliminary injunction. Thus, this court affirmed the trial court's dismissal of the case.

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## DISTRICT OF COLUMBIA

**Jubilee Hous., Inc. v. Dist. of Columbia Water and Sewer Auth., 774 A.2d 281 (D.C. 2001)** (holding the Water and Sewer Authority was not exempt from following the specific statutory requirement that all rate changes be preceded by notice and public hearing).

Jubilee Housing, Inc. ("Jubilee"), a non-profit housing organization, brought this action against the District of Columbia Water and Sewer Authority ("Authority") following the Authority's termination of preferential water rates for non-profit housing organizations. The Authority did not provide a public hearing and only provided notice to some, but not all, organizations affected by the termination.

Under section 43-1686 (a) and (b) of the District of Columbia Code ("DCC"), the Authority was allowed to collect and abate fees and establish and adjust retail water and sewer rates "following notice and public hearing." The only issue the Authority raised in defense was whether the temporary termination of preferential water rates constituted "establishing" water and sewer rates for purposes of section 43-1686 (b) of the DCC.

The court held that the termination of the preferential rates did constitute establishing water and sewer rates under the code and therefore, the Authority was required to provide notice and public hearing prior to the termination of the rates. The court reasoned that the termination of the rates would impose a new obligation on Jubilee