

COLORADO SUPREME COURT

Ralph Carr Judicial Center
2 East 14th Avenue
Denver, Colorado 80203
Phone No. 720-625-5150

DISTRICT COURT, WATER DIVISION NO. 4

Hon. J. Steven Patrick
District Court Judge
Case No. 23CW3000

Plaintiffs/Appellants:

PAMELA BARRETT and RAYMOND M.
COSSEY

v.

Defendants/Appellees:

DIVISION OF WATER RESOURCES,
STATE OF COLORADO; OFFICE OF THE
STATE ENGINEER; KEVIN G. REIN, P.E., as
STATE ENGINEER, STATE OF COLORADO;
HAROLD PRIESTLEY; DRUE PRIESTLEY, and
the HDP REVOCABLE TRUST

▲ COURT USE ONLY ▲

Attorney for Appellants:

Amy N. Huff
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Case No: _____

Div.:

Ctrm.:

NOTICE OF APPEAL

In accordance with Rule 3 and 4 of the Colorado Appellate Rules of the Colorado Revised Statutes, PAMELA BARRETT and RAYMOND M. COSSEY (collectively “Cossey”), by and through their undersigned counsel, Amy N. Huff, Colorado Water & Land Law, LLC, hereby provide notice to the Defendants in Case No. 23CW30077, District Court, Water Division No. 4, and to the Colorado Supreme Court that Cossey intends to appeal the water court’s ORDER RE: MOTION TO DISMISS in Case No. 2023CW3000, District Court, Water Division No. 4.

I. TRIAL COURT INFORMATION

COURT: District Court, Water Division No. 4

COUNTY: Montrose County

JUDGE’S NAME: Hon. J. Steven Patrick

PARTIES INITIATING THE APPEAL: Pamela Barrett and Raymond M. Cossey

TRIAL COURT CASE NUMBER: 2023CW30000

II. BRIEF DESCRIPTION OF NATURE OF CASE

A. Statement of Controversy:

Cossey appeals the water court's dismissal of their Complaint for Judicial Review of a Decision of the State Engineer, which affirmed without modification the hearing officer's order in Administrative Action No. 21SE08. Administrative Action No. 21SE08 was initiated by the Priestleys'¹ Complaint to Revoke Well Permit Nos. 31172-321180, and 321185-321187 (the "Cossey Permits"). The Cossey Permits were issued as exempt from priority administration under Section 37-92-602 of the Water Right Determination and Administration Act. During the Administrative action, the Priestleys claimed to own water rights that belonged to their neighbor, made false statements while under oath, and did not attempt to comply with their disclosures obligations or meet their burden of proof.

Based on the undisputed facts, the hearing officer summarily held that the Cossey Permits were valid, and that the Priestley did not present any evidence of injury. The hearing officer's order, however, contained statements of fact and conclusions of law that were not supported by the record and were contrary to law. Cossey's exceptions asserted that the hearing officer wrongly: (i) applied non-binding guidance as a legal standard; (ii) cloaked the Norwood Water Commission with ultra vires authority to veto certain well permit applications; (iii) found that

¹ The Priestleys collectively refers to Harold Priestley, Drue Priestley, and the HDP Revocable Trust.

the Priestley's complaint did not lack substantial justification; and (iv) denied Cossey's request for damages, attorney fees, and costs. The State Engineer rejected Cossey's exceptions and affirmed the hearing officer's order in its entirety.

Cossey timely appealed the Decision of the State Engineer to the District Court, Montrose County, under the Colorado Administrative Procedure Act (C.R.S. § 24-4-106(4)). The Montrose County District Court found that Cossey's appeal of the decision of the State Engineer was within the exclusive jurisdiction of the water court and dismissed Cossey's case (Case No. 22CV30077) without prejudice. Cossey then filed their Complaint for Judicial Review in the District Court, Water Division No. 4 (Case No. 23CW3000). The water court found that Cossey's complaint was untimely and dismissed it.

B. The Judgment, Order or Parts Being Appealed and a Statement Indicating the Basis for the Appellate Court's Jurisdiction:

Cossey appeals the Order Re: Motion to Dismiss, which was entered on April 18, 2023. Cossey appeals the water court's determination that Cossey improperly filed their complaint in 22CV30077 under section 24-4-106, C.R.S.,

that Cossey's complaint must be filed under C.R.S. § 37-92-602(3)(f), that Cossey failed to substantially comply with the statute of limitations in C.R.S. § 37-92-602(3)(f), and that Cossey's complaint is time barred. This Court has jurisdiction pursuant to C.R.S. § 13-4-102(1)(d); See *Meridian Ranch Metro. Dist. v. Colorado Ground Water Comm'n*, 240 P.3d 382, 385 (Colo. App. 2009).

- C. Whether the Judgment or Order Resolved All Issues Pending Before the Trial Court, Including Attorneys' Fees and Costs: The Order Re: Motion to Dismiss resolved all issues.
- D. Whether the Judgment Was Made Final for Purposes of An Appeal Pursuant to CRCP 54(b): Yes.
- E. The Date the Judgment or Order was Entered: April 18, 2023
- F. Whether There Were Any Extensions Granted to File Any Motions for Post-Trial Relief: No.
- G. The Date Any Motion for Post-Trial Relief Was Filed: None.
- H. The Date Any Motion For Post-Trial Relief Was Denied or Deemed Denied Under CRCP 59(j): None.
- I. Whether There Were Any Extensions Granted to File Any Notice(s) of Appeal: No.

III. AN ADVISORY LISTING OF THE ISSUES TO BE RAISED ON APPEAL

- A. Whether the water court incorrectly determined that Cossey's complaint was improperly filed in the district court, instead of the water court.

- B. Whether Cossey substantially complied with the statutory procedure for filing an appeal the State Engineer's decision.
- C. Whether Cossey's complaint is time barred.

IV. WHETHER THE TRANSCRIPT OF ANY EVIDENCE TAKEN BEFORE THE TRIAL COURT IS NECESSARY TO RESOLVE THE ISSUES RAISED ON APPEAL

No. No evidence was presented to the district court. The district court did not hold a hearing and there are no transcripts.

V. WHETHER THE ORDER ON REVIEW WAS ISSUED BY A MAGISTRATE

No.

VI. NAMES, ADDRESSES, TELEPHONE NUMBERS, AND REGISTRATION NUMBERS OF COUNSEL FOR THE PARTIES

Counsel for Cossey: Amy N. Huff, Reg. No. 34897, (amy@waterland-law.com), COLORADO WATER & LAND LAW, LLC, 679 E. 2nd Avenue, Ste 11B, Durango, Colorado 81301. (970) 403-1770.

Counsel for the Priestley: Nathan A. Keever, Reg. No. 24630, (keever@dwmk.com), DUFFORD WALDECK, 744 Horizon Court, #300, Grand Junction, Colorado 81506

Counsel for the State Engineer, the Division of Water Resources, and Kevin Rein: Bruce C. Walters, Assistant Attorney General, Reg. No. 50235,

