Clerk of the Superior Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-005545 07/22/2026

HONORABLE DAVID MCDOWELL

CLERK OF THE COURT
K. Johanson
Deputy

SHEILA JANISCH

FRANK M FOX

v.

SCOTTSDALE MOUNTAIN COMMUNITY ASSOCIATION, et al.

EDEN COHEN

JUDGE MCDOWELL

RULING ON APPLICATION FOR PRELIMINARY INJUNCTION

On June 2, 2026 Plaintiffs asked the court to address Mr. Creed's May 6, 2026 *Plaintiff's Emergency Application for Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction* based upon the parties' arguments of June 2, 2026 and supplemental briefing.

The court has considered the May 6, 2026 *Plaintiff's Emergency Application;* the June 15, 2026 *Plaintiff David Creed's Memorandum for Preliminary Injunction to Restore Resident Gate Access;* the June 16, 2026 *Notice of filing Exhibits in Support of Plaintiff David Creed's Memorandum for Preliminary Injunction to Restore Resident Gate Access;* and the June 24, 2026 *Defendants' Response in Opposition to Plaintiff David Creed's Memorandum for Preliminary Injunction to Restore Resident Gate Access.*

A party seeking a preliminary injunction must show (1) a strong likelihood of success on the merits, (2) the possibility of irreparable harm if the relief is not granted, (3) the balance of hardships favors the party seeking injunctive relief, and (4) public policy favors granting the injunctive relief. *Fann v. State*, 251 Ariz. 425 (2021). To establish that the harm is irreparable, the moving party must show that it is not compensable by monetary damages. *City of Flagstaff v. Arizona Department of Administration*, 255 Ariz. 7 (2023).

To meet the four-part burden, the moving party may establish either (1) probable success on the merits and the possibility of irreparable injury, or (2) the presence of serious questions and that the balance of hardships tips sharply in favor of the moving party. *Fann v. State*, 251 Ariz. 425 (2021). The relationship between probable success on the merits and the possibility of irreparable harm is inversely proportionate: the greater and less reparable the harm, the less the showing of a strong likelihood of success on the merits need be. *Shinn v. Arizona Board of Executive Clemency*, 254 Ariz. 255 (2022). Conversely, if the likelihood of success on the merits is weak, the showing of irreparable harm must be stronger. *Id.*

Plaintiff David Creed requests seven items of relief including (1) mandatory preliminary injunction for access restoration, prohibited preliminary injunction against manual delays, individual injunction against entrance interference, individual injunction against surveillance tracking, evidence preservation, nominal security bond, and assessment of attorney fees and costs. Some of these items are not argued in the filings such as the request for an injunction against surveillance tracking. While Mr. Creed argued he was being monitored throughout the subdivision, the argument was not developed, and he did not argue the four elements required for a preliminary injunction were met as to this relief. The request for evidence preservation was similarly not developed. Additionally, many of the other items of requested relief are more broad than the briefings support – for instance all of the briefing addresses Mr. Creed and his particular circumstances, but the first item in the prayer requests that the transponder on a particular vehicle be restored – without regard to who is operating it.

The briefing submitted by Mr. Creed, without regard to what is included in the prayer, seeks an injunction permitting Mr. Creed to enter the subdivision without having to go through the visitor lane or having to provide his name and address to the gate attendant. The information submitted indicates Mr. Creed has had two incidents with newly hired gate attendants since May 1, 2026, but there was no mention of issues in the three years prior since the resident activation stickers were deactivated.

Because the parties elected to proceed by briefing, the court must make its determination based upon what little admissible evidence has been submitted. Mr. Creed argues there is a risk of an immediate life-threatening event and the court certainly takes the allegations of risk to an individual's health seriously, but assertion that he would suffer irreparable harm must be supported by admissible evidence. Mr. Creed's assertions were not. The letters from Dr. Turner and Ms. Kennedy are unsigned; the report from Dr. Koduri is not sworn; and the medical necessity forms are unsworn. Further, the opinions stated, even if they were admissible, are not stated within a reasonable degree of medical probability.

The court declines to issue a preliminary injunction based upon the briefing submitted, the causes of action stated in Mr. Creed's complaint, his lack of standing (as a non-owner) to challenge the

decisions of the Association, and his failure to meet his burden of proof to establish entitlement to a preliminary injunction.

IT IS ORDERED denying Mr. Creed's request for a preliminary injunction.