

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
15 CVS 6560

DUKE ENERGY PROGRESS, INC.,)
)
Plaintiff,)
)
V.)
)
JOHN M. KANE and KATHERINE K.)
KANE f/k/a KATHERINE KNOTT,)
)
Defendants.)
)

ORDER DENYING IN PART
AND ALLOWING IN PART
PRELIMINARY INJUNCTION

THIS CAUSE, coming on for hearing before the undersigned Judge Presiding on the Motion for Preliminary Injunction by Plaintiff, the Court having reviewed the Verified Complaint filed by the Plaintiff and the evidence submitted by both parties and having heard arguments of counsel for the Plaintiff and arguments of John M. Kane appearing *pro se*, this Court finds as follows:

FINDINGS OF FACT

1. The Defendants own the property at 1516 Brooks Avenue in Raleigh, North Carolina (“Defendants’ property”). The Plaintiff enjoys a fifty foot easement through Defendants’ property. On that easement stands a high voltage transmission line belonging to the Plaintiff. The literal language of the easement is not in dispute. The legal effect of the easement, as applied to the facts of this case, is in dispute.

2. A forty-four foot tall willow tree (the “Northern Tree”) stands on Defendants’ property within the Plaintiff’s easement. As of May 18, 2015, the Northern Tree stood at least ten feet below the transmission line. The Court is unable to find from the evidence presented whether the Northern Tree has reached its maximum height or what the likelihood is that the Northern Tree will ever cause any damage to the transmission line.

3. A fifty-seven foot tall dawn redwood tree (the "Southern Tree") stands on the property at 1514 Brooks Avenue in Raleigh, North Carolina and also stands within the Plaintiff's easement. 1514 Brooks Avenue adjoins the Defendants' property. The Southern Tree reaches above the transmission line and is only six feet away from the transmission line horizontally. The Court finds as a fact that the Southern Tree poses an eminent risk of contact with and damage to the transmission line.

4. The only safe way for the Plaintiff to remove the Southern Tree is to come upon Defendant's property and to station machinery, equipment, and personnel within the easement.

CONCLUSIONS OF LAW

1. On a preliminary basis, the Plaintiff has failed to show that it will suffer irreparable injury concerning the Northern Tree nor has the Plaintiff shown that its rights will not be protected during the course of this litigation if the Defendants are not restrained and enjoined as requested concerning the Northern Tree.

2. The Plaintiff has also failed to show that it has a likelihood of prevailing on the merits of this case concerning the Northern Tree.

3. The easement allows the Plaintiff to access the Defendants' property to exercise its rights concerning the easement, even those rights it can exercise concerning adjoining lands. It has therefore shown a likelihood of prevailing on the merits of its case concerning the Southern Tree.

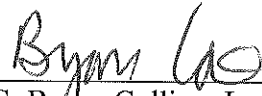
4. The Plaintiff has also shown that the issuance of a Preliminary Injunction is necessary to prevent an irreparable injury, namely a widespread power outage that could impact thousands of Wake County citizens.

5. A \$50,000.00 bond is necessary to protect the Defendants from such costs and injuries they may suffer in the event this Preliminary Injunction is dissolved or otherwise found to be wrongful.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

The Plaintiff's Motion for Preliminary Injunction is DENIED as to the Northern Tree and is ALLOWED as to the Southern Tree. The Defendants SHALL, upon the required \$50,000.00 bond being posted by the Plaintiff in the manner provided in Rule 65 (c) of the North Carolina Rules of Civil Procedure, allow the Plaintiff to come onto their property for the sole purpose of placing machinery, equipment, and personnel on their property within the easement to remove the Southern Tree. The Plaintiff will do so at such a place and manner as will do the least injury to the property of the Defendants. The Defendants SHALL NOT engage in any actions which prevent the Plaintiff from exercising its lawful rights under the easement with respect to the Southern Tree.

SO ORDERED, this the 4th day of June, 2015.



G. Bryan Collins, Jr.
Superior Court Judge Presiding