SUMMARY
February 2, 2023

2023COA10

No. 21CA1525, *San Juan Hut Systems, Inc. v. Board of County Commissioners* — Regulation of Vehicles and Traffic — Right to Restrict Highway Use — Snow-packed Conditions

In a case of first impression, a division of the court of appeals considers a county's statutory authority under section 42-4-106(3)(d), C.R.S. 2022, to restrict vehicular traffic during periods when "snow-packed conditions are . . . likely to exist" and to direct nonvehicular, over-the-snow traffic from that road to a designated trail. Concluding that the county was granted this express statutory authority while the appeal was pending, the division dismisses in part and otherwise affirms.

COLORADO COURT OF APPEALS **2023COA10**

Court of Appeals No. 21CA1525
Ouray County District Court No. 19CV30000
Honorable J. Steven Patrick, Judge

San Juan Hut Systems, Inc.,

Intervenor-Appellant,

v.

Board of County Commissioners of the County of Ouray, Colorado,

Defendant-Appellee,

and

Wolf Land Company, LP; Stephen King; Christina King; Gary R. Hollowell Revocable Trust; Jenny Lee Philips Revocable Funded Living Trust; Sophia Arjana; English Enterprises II, LLC; Phillips Kelly, LLC; Clara C. Moore Trust Dated November 7, 2008; Eric C. Faust; Jennifer W. Faust; Mesa Preservation, LLC; Clay Alfred Hartmann; Steven Phillip Dieckmann; and Lapointe Joint Trust Dated December 12, 2016,

Appellees.

APPEAL DISMISSED IN PART AND ORDER AFFIRMED

Division I
Opinion by JUDGE FURMAN
Dailey and Davidson*, JJ., concur

Announced February 2, 2023

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*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2022.

¶ 1 This case began as a dispute between the Board of County Commissioners of the County of Ouray (County) and a group of property owners (Landowners) over vehicular access to approximately three and a half miles of Ouray County Road 5 (CR 5).

¶ 2 The Landowners own real property that is accessed from CR 5. In the past, the Landowners entered into winter maintenance agreements (WMAs) with the County. But some years ago, the County decided not to enter into a new WMA and closed CR 5 to vehicular traffic by closing a cattleguard gate that crosses the road. The Landowners proposed a new WMA. But the Landowners and County disagreed over the terms, and the County ultimately decided it would adopt a WMA with more restrictions and conditions than the Landowners liked. So the Landowners filed a C.R.C.P. 106(a)(4) action in the district court to challenge the County's decision.

¶ 3 San Juan Hut Systems, Inc. (SJHS) operates rental huts, two of which are located in the Grand Mesa, Uncompahgre and Gunnison National Forests (National Forest) and are most easily accessed from CR 5.

¶ 4 SJHS filed, and the district court granted, a motion to intervene in the Landowners' C.R.C.P. 106(a)(4) action. SJHS's intervenor complaint sought declaratory and injunctive relief to bar the County from entering into any WMAs that would permit only the Landowners to have vehicular access along upper CR 5. It argued that vehicular traffic on the road should either be open to all or closed to all.

¶ 5 Both SJHS and the Landowners filed C.R.C.P. 56 summary judgment motions against the County. The district court considered the motions and found that there were no material facts in dispute. The court concluded that the County had not (1) violated any protected property right possessed by the Landowners; (2) violated section 43-2-201.1, C.R.S. 2022; or (3) exceeded the scope of its discretion under its statutorily granted authority. So the court denied both motions.

¶ 6 The County and the Landowners eventually settled their dispute and entered into a new winter maintenance easement agreement (WMEA). This WMEA granted the Landowners a nonexclusive right to plow and access their properties along CR 5 by installing an additional gate. In exchange, it also mandated the

construction of a separate trail that substantially parallels CR 5 to provide nonvehicular, over-the-snow access to the upper portion of CR 5. And shortly thereafter, the district court dismissed SJHS's claims under the reasoning from its order denying summary judgment.

¶ 7 On appeal of the order denying its motion for summary judgment, SJHS contends that the district court erred in concluding that (1) the County had the authority to allow only the Landowners access to CR 5 by vehicle during winter and (2) the County was not in violation of section 43-2-201.1.

¶ 8 The County and Landowners contend that (1) SJHS lacks standing; (2) the issue of the County's authority is now moot; and (3) the County neither exceeded its authority nor violated section 43-2-201.1.

¶ 9 The County filed two notices of supplemental authority to bring a statutory change to this court's attention. In response, we directed all parties to address two issues in supplemental briefs: (1) the scope of authority granted to the County under section 42-4-106(3)(d), C.R.S. 2022, to enter into WMAs that also limit vehicular road access; and (2) whether reversing the district court's decision

denying SJHS's summary judgment motion would afford the relief sought based on the current state of affairs along the upper portion of CR 5.

¶ 10 We dismiss this appeal in part and otherwise affirm.

I. Standing

¶ 11 The County and Landowners contend that SJHS lacks standing. We disagree.

A. Applicable Law

¶ 12 Standing requires the plaintiff to show that it has suffered an injury in fact to a legally protected interest. *Hickenlooper v. Freedom from Religion Found., Inc.*, 2014 CO 77, ¶ 8; *Wimberly v. Ettenberg*, 194 Colo. 163, 168, 570 P.2d 535, 539 (1977).

¶ 13 To meet the injury-in-fact requirement, the plaintiff must show that the activity complained of "has caused or has threatened to cause injury to the plaintiff such that 'a court [can] say with fair assurance that there is an actual controversy proper for judicial resolution.'" *Dunlap v. Colo. Springs Cablevision, Inc.*, 829 P.2d 1286, 1289 (Colo. 1992) (quoting *O'Bryant v. Pub. Utils. Comm'n*, 778 P.2d 648, 653 (Colo. 1989)). The injury does not have to be tangible (e.g., physical or economic harm), *Ainscough v. Owens*, 90

P.3d 851, 856 (Colo. 2004), but "the remote possibility of a future injury" or an injury that is "overly 'indirect and incidental' to the defendant's action" is not sufficient to establish standing, *id.* (quoting *Brotman v. E. Lake Creek Ranch, L.L.P.*, 31 P.3d 886, 890-91 (Colo. 2001)).

¶ 14 "To determine whether there is an injury-in-fact, we accept as true the allegations set forth in the complaint." *Id.* at 857 (citing *Dunlap*, 829 P.2d at 1289).

¶ 15 The second prong, the legally protected interest, "is a question of whether the plaintiff has a claim for relief under the constitution, the common law, a statute, or a rule or regulation." *Id.* at 856 (citing *Bd. of Cnty. Comm'rs v. Bowen/Edwards Assocs., Inc.*, 830 P.2d 1045, 1053 (Colo. 1992)).

¶ 16 "Whether a party has standing is determined as of the time the action is filed." *Am. Comp. Ins. Co. v. McBride*, 107 P.3d 973, 976 (Colo. App. 2004) (citing *Grossman v. Dean*, 80 P.3d 952 (Colo. App. 2003)). "In Colorado, parties to lawsuits benefit from a relatively broad definition of standing." *Ainscough*, 90 P.3d at 855.

B. Standard of Review

¶ 17 Standing is an issue of law that we review de novo. *Ainscough*, 90 P.3d at 856. We may consider any evidence submitted on the issue to determine whether a party has standing. *Bowen/Edwards Assocs.*, 830 P.2d at 1053; *Rangeview, LLC v. City of Aurora*, 2016 COA 108, ¶ 11.

C. SJHS's Standing

¶ 18 The County and Landowners contend that SJHS lacks standing because their settlement agreement altered the way that nonvehicular over-the-snow traffic reaches the upper portion of CR 5 such that any alleged injuries to SJHS have already been remedied. We disagree.

¶ 19 SJHS alleged the following in its complaint, supported by an affidavit.

- SJHS has owned and operated a series of huts as an overnight rental business since 1994.
- Two of its huts, located in the National Forest, are directly accessed from CR 5.

- For many years, the County closed CR 5 to vehicles during the winter, and access to SJHS's huts was restricted to over-the-snow travel.
- A few years before this litigation began, the County entered into a WMA that allowed a select group of Landowners to plow and access by vehicle the portion of CR 5 behind the gate. The public was not allowed the same access to this gated upper portion of CR 5.
- "When the gate has been closed and limited vehicles were able to enter through the gate, the Upper Portion of CR 5 has been unsafe for people to traverse to access SJHS's huts and the . . . National Forest."
- "For the majority of SJHS's customers to access [its] Huts, they must be able to either park at the intersection of CR 5 and CR 5-A and utilize the closed road that is free of vehicular traffic, or they too must be permitted to drive their vehicles on all plowed sections of the Upper Portion of CR 5. The [two] Huts are not practically accessed from any other County road besides CR 5."

¶ 20 Taking these allegations as true, the WMA made traversing CR 5 more difficult for SJHS's guests. *See Ainscough*, 90 P.3d at 857. This was an injury in fact because a potentially difficult or dangerous trek from the parking area up to SJHS's huts endangered its guests, possibly damaged its reputation, and thus hurt its business. An injury in fact may be tangible — such as economic harm — or intangible — such as damage to an aesthetic interest — and business revenue is a legally protected interest. *See id.* at 856; *Colo. Med. Soc'y v. Hickenlooper*, 2012 COA 121, ¶ 24.

¶ 21 We therefore conclude that SJHS has standing.

II. Closing the Road to Vehicles

¶ 22 The County and Landowners also contend that this case is moot because, after this appeal was filed, the General Assembly amended a statute to expressly authorize the County to close roads when they are likely to be snow packed and to enter into WMA agreements. SJHS counters that its interest in having vehicular access remains unsatisfied and the same issues it raised in its intervenor complaint still apply. SJHS maintains that a decision in its favor will have a practical legal effect because a declaration that the County exceeded its authority would require the County to

either open or close the road to all. *See Russell v. City of Central*, 892 P.2d 432 (Colo. App. 1995).

¶ 23 We agree in part with the County and Landowners' contention and conclude that part of this case is moot.

A. Mootness by Statutory Change

1. Law and Doctrine

¶ 24 "A case is moot when a judgment, if rendered, would have no practical legal effect upon the existing controversy." *Van Schaack Holdings, Ltd. v. Fulenwider*, 798 P.2d 424, 426 (Colo. 1990); *see Zoning Bd. of Adjustment v. DeVilbiss*, 729 P.2d 353, 356 (Colo. 1986).

¶ 25 When issues presented in litigation become moot due to subsequent events, an appellate court will not render an opinion on the merits of the appeal. *Campbell v. Meyer*, 883 P.2d 617, 618 (Colo. App. 1994). "[N]ew legislation can cause a case to be moot when it forecloses the prospect of meaningful relief." *Giuliani v. Jefferson Cnty. Bd. of Cnty. Comm'rs*, 2012 COA 190, ¶ 14.

2. County's Statutory Authority

¶ 26 After this litigation began, the General Assembly amended section 42-4-106 by adding a new subsection (3)(d). Ch. 94, sec. 1,

§ 42-4-106, 2022 Colo. Sess. Laws 451. This subsection provides as follows:

> Local authorities, with respect to highways under their jurisdiction, may . . . , by ordinance or resolution:
>
> . . . .
>
> (d)(I) When snow-packed conditions exist on a highway or for a continuous seasonal period designated by the local authority when snow-packed conditions are, as determined by the local authority, likely to exist on a highway, designate all or a portion of a highway for over-snow use only, which the local jurisdiction may further limit to travel by human-powered or animal-powered means, or both.
>
> . . . .
>
> (IV) When wheeled winter access is requested along a highway, nothing in this subsection (3)(d) prohibits a local authority from entering into private winter maintenance agreements and such requests shall be considered.

§ 42-4-106(3)(d)(I), (IV).

¶ 27 Counties are statutorily authorized "[t]o make all contracts and do all other acts in relation to the property and concerns necessary to the exercise of its corporate or administrative powers" and "[t]o sell, convey, or exchange any real or personal property owned by the county and make such order respecting the same as

may be deemed conducive to the interests" of the county's residents. § 30-11-101(1)(c)-(d), C.R.S. 2022.

¶ 28 "The powers of a county as a body politic and corporate shall be exercised by a board of county commissioners therefor." § 30-11-103, C.R.S. 2022.

3. Winter Maintenance Agreement

¶ 29 The district court entered findings that CR 5 is County property and within the County's jurisdiction to regulate.

¶ 30 Pursuant to its authority to regulate traffic and roads, the County adopted Resolution 2016-019 to announce the County's criteria for entering into WMAs. The County considered the relevant criteria under this Resolution and then entered into, and adopted through Resolution 2020-049, the WMEA for CR 5 as part of its settlement with the Landowners.

¶ 31 Based on the new express statutory authority to enter into WMAs provided by section 42-4-106(3)(d)(IV), and the County's existing authority, we conclude that the issue of whether the County exceeded its authority by entering into this WMA is moot.

¶ 32 The relief that SJHS requested from the district court was a declaratory judgment that the County had exceeded its statutory

authority and an injunction to prevent any actions taken in excess of that authority. But we conclude that the statutory authority to enter into these WMAs has been expressly granted by section 42-4-106(3)(d), so an appellate decision in SJHS's favor regarding the previous statute would have no practical effect on the controversy as it exists now. *See Van Schaack Holdings*, 798 P.2d at 426; *Giuliani*, ¶ 14. We reach this conclusion for the following four reasons.

¶ 33 First, section 42-4-106(3)(d)(IV) grants broad authority to the County to enter into WMAs. This statute expressly provides that local authorities "shall" consider WMAs when wheeled winter access is requested. *Id.* Section 42-4-106(3)(d)(IV) explicitly contemplates private parties maintaining roads in the winter, and this implies that the extent of those efforts would include maintaining the portions of a road in which a private party is interested. WMAs, such as the WMEA, that permit, but do not require, plowing to the degree requested by private parties fit within that purview.

¶ 34 Second, section 42-4-106(3)(d)(I) expressly authorized the County to designate all or a portion of the road for only over-the-snow travel when it finds that snow-packed conditions are likely to

exist. The power to so designate roads implies that the County has the authority to prevent vehicles from traversing the designated portion of the road, and locking a gate to prohibit vehicular traffic is a reasonable way of doing so. *See* § 42-4-111(1)(c), C.R.S. 2022 (local government is authorized to regulate traffic on roads within its jurisdiction by using official traffic control devices); *see also* § 42-1-102(64), C.R.S. 2022 ("'Official traffic control devices' means all signs, signals, markings, and devices, not inconsistent with this title, placed or displayed by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic.").

¶ 35 Third, the County has broad regulatory authority over its highways to control the flow of traffic and dictate where cars may park. *See, e.g.*, § 42-4-111(1)(a), (u), (w), (y). Under this authority, the County can reasonably designate a trail to the side of the roadway for over-the-snow access and designate a specific public parking area for those who access the over-the-snow trail. *See* §§ 42-4-106(3)(d)(I), 42-4-111(1)(a), (u), (y).

¶ 36 Fourth, section 42-4-106(3)(d) does not preclude the County from both entering into a WMA for a portion of CR 5 and exercising

its authority to designate a portion of the road for over-the-snow travel under section 42-4-106(3)(d)(I). The WMEA allows, but does not require, the Landowners to plow to their properties along CR 5. If partial or irregular plowing leaves it likely that snow-packed conditions exist on portions of CR 5, the County may exercise its authority as described above. *See* § 42-4-106(3)(d)(I).

B. The Landowners' Easement

¶ 37 SJHS acknowledges that the County has implied statutory authority to enter into some WMAs. But SJHS contends that this statutory authority does not authorize the County to enter into a WMA pursuant to section 42-4-106(3)(d) that does not fully open vehicular access on the road to the public. We disagree.

¶ 38 We begin by considering how the County granted the Landowners access, by a nonexclusive easement, and then consider whether a reversal of the district court's order would undo this grant. We conclude that such a reversal would have no practical effect on either the County's authority to close CR 5 to vehicles or the Landowners' right to wheeled access.

1. Law

¶ 39 "An easement creates a nonpossessory property right to enter and use land in the possession of another and obligates the possessor [of land] not to interfere with the uses authorized by the easement." *Matoush v. Lovingood*, 177 P.3d 1262, 1264 n.2 (Colo. 2008) (quoting Restatement (Third) of Prop.: Servitudes § 1.2(1) (Am. L. Inst. 2000)). "An easement is said to be 'appurtenant' to property when the benefit or burden of the easement 'runs with' an interest in property. Owners of the property are entitled to the benefit, or subject to the burden, of the easement due to their relation to the property." *Lazy Dog Ranch v. Telluray Ranch Corp.*, 965 P.2d 1229, 1234 (Colo. 1998).

> [W]here an easement is non-exclusive in nature, both the holder of the easement and the owner of the land burdened by the easement have rights to use the property. Consequently, the interests of both parties must be balanced in order to achieve due and reasonable enjoyment of both the easement and the servient estate.

Id. at 1238.

2. Analysis

¶ 40 Access to the upper portion of CR 5 is controlled by three gates that are side by side, adjacent to a public parking area, and located at the point where the County stops clearing snow from CR 5. Two of these gates can allow vehicular traffic. One vehicular gate, a cattleguard gate across the middle of the road, is the central entry point for upper CR 5. The second vehicular gate, which was built off to the side, is an automated gate that the Landowners use to access their properties. Adjacent to the cattleguard gate is the entrance gate to a trail for nonvehicular travel that follows essentially the same route as the upper portion of CR 5; this is the over-the-snow trail.

¶ 41 Under the terms of the settlement agreement, the County retains control over the cattleguard gate and the entrance to the trailhead. The County may open or close the cattleguard gate, as it has in the past when the County restricted vehicular access to upper CR 5. And the terms of the settlement agreement require that the trailhead entrance remain unlocked and open to the public during the winter. The Landowners control the automated gate, which authority was granted to them under the easement.

¶ 42 The County's authority under the new statute allows it to (1) designate some or all of CR 5 "for over-snow use only" when "snow-packed conditions are . . . likely to exist"; (2) close the cattleguard gate to prevent vehicular traffic; and (3) direct travelers to the over-the-snow trail. *See* § 42-4-106(3)(d); *see also* §§ 42-4-111(1)(c), 42-1-102(64). But pursuant to the WMEA, the Landowners retain their right under the easement to plow and access their properties by wheeled travel on CR 5 from their gate to their driveways.

¶ 43 SJHS contends that this constitutes the County discretionarily limiting who may use vehicles to travel CR 5 during the winter. SJHS argues that if we reverse the district court's denial of summary judgment, then SJHS, its "clients, and the public [would have] the same rights as the private [L]andowners. [SJHS] would have the right to access its hut system by vehicle, over-snow access, or both, depending on the County's decision" to either open or close the road pursuant to its authority. We disagree.

¶ 44 SJHS has not challenged the County's authority to convey this easement as part of a WMA. Nor does SJHS continue to challenge the County's power to restrict vehicular access to the road. We therefore conclude that reversing the district court's order would

not alter how SJHS, the Landowners, or the public access upper CR 5. That is, reversing the order would not rescind the Landowners' easement or grant any new easements to SJHS or any other party. And it would not preclude the County from closing its gate and restricting vehicular travel under its new authority. Thus reversal would have no practical legal effect on this controversy. *See Van Schaack Holdings*, 798 P.2d at 426.

¶ 45 But wait, says SJHS. The County cannot evade statutory mandates by entering into contracts. SJHS argues broadly that the settlement agreement and WMEA between the County and Landowners violate section 42-4-106(1), (3)(a), (3)(b), and (3)(d)(I).

¶ 46 Each of the provisions of section 42-4-106 on which SJHS relies authorizes local authorities to restrict vehicular use on roads for different reasons and in different situations. The County's exercise of the statutory authority granted by one provision of section 42-4-106(3)(d) does not result in a conflict with these other provisions. And the WMEA does not affect the County's restriction on the use of the road; it conveys to the "[o]wners of the propert[ies] . . . the benefit . . . of the easement due to their relation to the property." *Lazy Dog Ranch*, 965 P.2d at 1234.

¶ 47 SJHS's reliance on the following cases for the proposition that the County and Landowners' settlement agreement violate section 42-4-106 is misplaced.

¶ 48 In *University of Denver v. Industrial Commission*, our supreme court was asked to determine whether an early settlement agreement between private parties would shorten the statutory period during which the Industrial Commission could review and amend a damage award. 138 Colo. 505, 507-10, 335 P.2d 292, 293-94 (1959). The court determined that such a settlement did not alter this period. *Id.* In *Guy v. Whitsitt*, the division held that the confidentiality terms in a town employee's contract and the employee's privacy interests must give way to the town's compliance with the Colorado Open Meetings Law. 2020 COA 93, ¶¶ 29-32. And *Cummings v. Arapahoe County Sheriff's Office* reaffirmed that the Sheriff's Office may not use contractual disclaimers to undo an implied employment contract created by statute. 2021 COA 122, ¶ 14. Each of these cases involved either a conflict between a government contract and a statutory provision or a contract between private parties limiting the government's statutory authority. But this case does not involve such questions.

¶ 49 We thus conclude that questions around the County's authority to restrict vehicular access on CR 5 under section 42-4-106(3)(d) and the Landowners' right to access their properties under their easement are moot. We dismiss this portion of the appeal. *See DeVilbiss*, 729 P.2d at 356; *Van Schaack Holdings*, 798 P.2d at 426.

¶ 50 To the extent that SJHS urges us to decide additional issues despite mootness, we decline. "The duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not . . . to declare principles or rules of law which cannot affect the matter in issue before it." *Barnes v. Dist. Ct.*, 199 Colo. 310, 312, 607 P.2d 1008, 1009 (1980) (quoting *People v. Dist. Ct.*, 78 Colo. 526, 530, 242 P. 997, 998 (1925)).

III. Do the Gates Violate Section 43-2-201.1?

¶ 51 SJHS contends that the County violated section 43-2-201.1 by installing, or allowing, a gate that closes CR 5 to vehicular traffic. We disagree.

A. Standard of Review

¶ 52 Ordinarily, a district court's order denying a motion for summary judgment is not reviewable on appeal. *Feiger, Collison & Killmer v. Jones*, 926 P.2d 1244, 1250 (Colo. 1996). But as our supreme court has explained, "[W]here the parties file cross-motions for summary judgment on the issue of liability and the district court grants one, denies the other, and then resolves the issue of damages at a bench trial, the judgment is final and we may review the order denying summary judgment." *Dep't of Nat. Res. v. 5 Star Feedlot, Inc.*, 2021 CO 27, ¶ 41.

¶ 53 In this case, the district court's order denied both the Landowners' and SJHS's motions for summary judgment and thus did not completely resolve the controversy. But the district court denied SJHS's summary judgment because the court concluded that the County had the statutorily vested authority to "allow limited vehicular access" on CR 5. Because SJHS had sought a declaratory judgment that the County did not have this specific authority, SJHS then filed a motion for determination of a question of law that (1) argued the law of the case precluded its requested relief and (2) asked the court to enter a final judgment to dismiss its

claims. The court agreed, dismissed SJHS's claims, and entered the final judgment. So while the ordinary effect of denying a summary judgment motion is that the case simply proceeds, here the court's legal conclusion from the denial order effectively ended SJHS's claims, just with an extra procedural step. Accordingly, we will review the order. *See id.*

¶ 54 We review an order granting or denying summary judgment de novo. *Westin Operator, LLC v. Groh*, 2015 CO 25, ¶ 19. Summary judgment "is appropriate only if 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Id.* (quoting C.R.C.P. 56(c)).

B. Statutory Law at Issue

¶ 55 Section 43-2-201.1(1) provides that

> [a]ny person, other than a governing body of a municipality or county acting pursuant to part 3 of this article 2, who intentionally blocks, obstructs, or closes any public highway, as described in section 43-2-201, that extends to any public land, including public land belonging to the federal government, *thereby closing public access to public lands*, without good cause therefor,

> commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501.

(Emphasis added.)

C. The Public Retains Access

¶ 56 SJHS contends that (1) section 43-2-201.1 applies to the County and (2) by constructing or allowing a gate over CR 5, the County has closed off access to public lands and violated the statute. We need not discuss whether section 43-2-201.1 applies to the County because we conclude that the County has not closed off all access, even with these gates in place.

¶ 57 As discussed above, the County has the express statutory authority to designate all or part of a CR 5 for over-snow use only. *See* § 42-4-106(3)(d)(I). This authority allows the County to restrict vehicular traffic's access to designated portions. *Id.* So the County exercising this authority and directing travelers to use an over-the-snow trail located to the side of a roadway is not the equivalent of closing off the public's access to public lands at the end of that roadway.

¶ 58 We therefore conclude that the district court did not err in denying SJHS's motion for summary judgment as it relates to an

alleged section 43-2-201.1 violation by the County and affirm this part of the order.

IV. Landowners' Appellate Attorney Fee Request

¶ 59 The Landowners' supplemental brief requests an award of appellate attorney fees. The Landowners argue that by continuing to pursue the appeal after the statute was amended, SJHS "is being stubbornly litigious and proceeding without injury." We disagree.

¶ 60 "Colorado law provides that a court shall assess attorney[] fees against a party if the party brought an action that lacked substantial justification or was for the purpose of delay or harassment." *Calvert v. Mayberry*, 2019 CO 23, ¶ 42 (citing § 13-17-102(4), C.R.S. 2022).

¶ 61 Even after the statutory change, SJHS presented rational arguments based on credible evidence to support its claims on appeal. And we find no indication that SJHS maintained its appeal in bad faith. We therefore conclude that SJHS's claims on appeal were not rendered substantially frivolous, groundless, or vexatious. *Id.* at ¶ 45. Accordingly, we decline to award appellate attorney fees to the Landowners.

V. Conclusion

¶ 62 The appeal is dismissed in part and the district court's order is affirmed.

JUDGE DAILEY and JUDGE DAVIDSON concur.