

that their use of the non-commercial motorcycle track on their private residential property can only be characterized as incidental to their occupancy, and that such use cannot, as a matter of law, be determined to require either a zoning permit or conditional use approval.

In considering the Laberges' motion, we note that summary judgment is only appropriate where "the pleadings, depositions, [and] answers to interrogatories, . . . together with the affidavits, if any, . . . show that there is no genuine issue as to any material fact and that any party is entitled to judgment as a matter of law." V.R.C.P. 56(c)(3). The Laberges must overcome a high procedural hurdle when filing such a motion, since they bear the burden of proof, Travelers Ins. Cos. v. Delmarle, Inc., 2005 VT 53, ¶ 3, 178 Vt. 570 (mem.), and "the Court must consider the facts presented in the light most favorable to the nonmoving party." Madkour v. Zoltak, 2007 VT 14, ¶ 12, 181 Vt. 347.

With these considerations in mind, we find that substantial disputes as to material facts exist in the record—namely, the extent, duration, and frequency of use by the Laberge family and non-family members since 2008, following the resolution of a noise dispute between the parties on December 4, 2007.¹ Resolving these issues will inform the Court's deliberation. We therefore conclude that a summary entry of judgment is not proper at this time. Rather, an evidentiary hearing is necessary to resolve disputes over material facts and enable the Court to thereafter render sound legal conclusions. We reach this conclusion, having determined that the Laberges are not "so clearly correct as to be entitled to judgment 'as a matter of law.'" Berlin Dev. Assocs. v. Dep't of Soc. Welfare, 142 Vt. 107, 110 (1982). Summary judgment must therefore be DENIED. We will proceed to trial as scheduled.

We note that Appellants initially appeared pro se when they first filed their Notice of Appeal and Statement of Questions, but have since retained Attorney Christopher Roy to assist in the presentation of their case. We ask Attorney Roy to advise whether Appellants' initial Statement of Questions may be consolidated, so as to assist the Court and the parties in efficiently conducting the trial in this appeal.

Thomas S. Durkin, Judge
September 15, 2009.
Date

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Date copies sent to: _____ Clerk's Initials _____

Copies sent to:

- Christopher D. Roy, Attorney for Appellants Fiona & Gary Fenwick
- Brian P. Hehir, Attorney for Appellees Matthew A. & Judith Laberge
- Interested Persons Tonia L. & David L. Bouchard
- Ernest M. Allen, III, Attorney for the Town of Hinesburg

¹ Two of Appellants' factual representations are unclear to the Court: whether Appellants agree that Appellees have reduced activity and participation on the track following the resolution of the previous dispute; and whether Appellants contend that a permit is required for use of the track by Appellees at any level of noise or frequency.