

**IN THE CIRCUIT COURT OF  
GARLAND COUNTY, ARKANSAS  
CIVIL DIVISION**

**HARRY & JEAN CHILDS TRUST; PLAINTIFF**

**VS. CASE NO.: 26CV-2022-\_\_\_\_\_ DIV. \_\_\_\_**

**DONALD ROBERTS d/b/a  
ROBERTS BROTHERS PARKING, LLC.; DEFENDANT**

**COMPLAINT IN EQUITY FOR INJUNCTIVE  
RELIEF AND FOR EMERGENCY RELIEF**

**COMES NOW**, the Plaintiff, **HARRY & JEAN CHILDS TRUST**, by and through its Attorney, **TAPP LAW FIRM, P.A.**, by **TYLAR TAPP**, and for its Complaint in Equity for Injunctive Relief and for Emergency Relief, it does hereby state and allege:

**JURISDICTIONAL STATEMENT**

1. The Plaintiff, is a is A duly formed trust in Hot Springs, Garland County, Arkansas with Harry Childs and Jean Childs as the Trustees and owners of certain real property located on Franklin Street in Hot Springs, Garland County, Arkansas.
2. That the Defendant, **DONALD ROBERTS**, is a citizen and resident of Garland County, Arkansas.
3. That upon a search of the Arkansas Secretary of State's records, **ROBERTS BROTHERS PARKING, LLC.** is not an Arkansas Corporation and upon information and belief **DONALD ROBERTS** is operating **ROBERTS BROTHERS PARKING, LLC.** and owner of certain real property located adjacent to the Plaintiff's property on Franklin Street.

4. That this case deals with certain real property located in Hot Springs, Garland County Arkansas.

5. That jurisdiction and venue are proper in the Garland County Circuit Court, Civil Division.

### FACTUAL ALLEGATIONS

6. That the Plaintiffs reassert and re-allege all allegations contained in paragraphs 1 -5 as it set forth word for word.

7. That the Plaintiff is the owner of certain tract of property located in Franklin Street, more particularly described as follows:

Lots 1, 2 and 3, Block 1 Wright's Subdivision #2, being a part of the Northwest 1/4 of the Southeast 1/4 of Section 17, Township 3 South of the Baseline Range 19 West of the Fifth Principal Meridian, City of Hot Springs, Garland County, Arkansas. More particularly described as follows: Beginning at the Southeast corner of Lot 3, Block 1, said Wright's Subdivision #2, thence North 87 degrees 59 minutes 51 seconds West along the South line of Lot 3 a distance of 255.31 feet to a rebar and cap (PLS #314) and the East right of way (R/W) of Normandy Street and the Southwest corner of Lot 3, thence North 00 degrees 56 minutes 13 seconds East along the West line of Lot 3 and Lot 2 and the R/W line of Normandy Street, a distance of 370.60 feet to a rebar and cap (PLS #314) on the South R/W line of Franklin Street and the Northwest corner of Lot 2, thence South 88 degrees 00 minutes 21 seconds East along the South R/W line of Franklin Street and the North line of Lots 1 and 2, a distance of 258.27 feet to the Northeast corner of Lot 1, thence South 01 degree 25 minutes 45 seconds West along the East line of Lots 1 and 3, a distance of 370.60 feet to the Point of Beginning.  
AND

An unplatted part of the Northwest 1/4 of the Southeast 1/4 of Section 17, Township 3 South of the Baseline Range 19 West of the Fifth Principal Meridian, City of Hot Springs, Garland County, Arkansas, More particularly described as follows. Beginning at the Northeast corner of Lot 1, Block 1, Wrights Subdivision #2, thence North 89 degrees 56 minutes 21 seconds East along the South R/W line of Franklin Street, a distance of 123.33 feet to a 12 inch spike and cap (Brady) , thence South 02 degrees 14 minutes 38 seconds West a distance of 366.59 feet to 12 inch spike and cap (Brady), thence South 87 degrees 54 minutes 57 seconds West, a distance of 118.50 feet to the Southeast corner of Lot 3, Block 1 Wrights Subdivision #2, thence North 01 degree

25 minutes 45 seconds East along the East line of Lots 1 and 3, a distance of 370.60 feet to the Point of Beginning.

8. That the Defendant is the owner of certain tract of property located in Franklin Street directly adjacent to the Plaintiff's property described above, more particularly described as follows:

**TRACT 1:**

Part of Lots 3 and 8 of J. M. Richards Subdivision AND Part of the NW 1/4 SE1/4 of Section 17, Township 3 South, Range 19 West, more particularly described as follows: Commence at the Southeast corner of Lot 3 of Block 1 of Wright's Subdivision#2 (same being the Northeast corner of Lot 4 of Block 1 of Wright's Subdivision #2); thence West along the South line of said Lot 3 for 256.6 feet to East right of way of Normandy Drive; thence North along said right of way 375 feet, said point being the Southeast corner of Franklin Street and Normandy Drive; thence Easterly along South line of Franklin Street 258.4 feet to the Northeast corner of Lot 1 of Wright's Subdivision #2; thence Easterly along South line of Franklin Street 403.5 feet to the West right of way of State Highway No. 7; thence Southeasterly along said right of way, 42.3 feet; thence Southerly along said right of way 136 feet; thence West 133.5 feet; thence South 191.5 feet to the North line of land conveyed to First Church of the Nazarene of Hot Springs, Arkansas, Inc. by Warranty Deed from Grantors, dated January 4, 1972 and recorded in Book 687 at Page 227 of the Deed and Mortgage Records of Garland County, Arkansas; thence in a Southwesterly direction and along said North line of lands heretofore conveyed to said Church, 352 feet, more or less to the Point of Beginning.

**LESS AND EXCEPT THE FOLLOWING:**

Lots One (1), Two (2) and Three (3) in Block One (1) of the Wright's Subdivision #2 AND Part of the NW 1/4 SE1/4 Section 17, Township 3 South, Range 19 West, described as follows: Begin at the SE corner of said Lot 3 and run West on the South line of said Lot 3 a distance of 256.6 feet to the East side of Normandy Drive; thence North 1 degree 15' West along the East side of Normandy Drive 375 feet to the South side of Franklin Street; thence South 89 degrees East along the South side of Franklin Street 412 feet; thence an angle to the right of 88 degrees 08' a distance of 355 feet; thence South 85 degrees 45' West a distance of 155.4 feet to the Point of Beginning. ALSO LESS AND EXCEPT THE FOLLOWING:

Part of the tract described in the Garland County Deed and Mortgage Records in Book 1700 at Page 186, more particularly described as follows: Commencing at the concrete Right-of-Way (R/W) marker on the West R/W line of Ark. Hwy. 7 (Central Ave.) at Station 453+12 (ahead) of Job 6708 (Ark. Dept. of Highways), thence N 17 degrees 26' 00" W for 154.8 feet to the South line of this Tract and the Point of Beginning (POB) for this Parcel A, thence S 89 degrees 16' 58" W along said South line for 47.4 feet, thence N 76 degrees 54' 59" E for 45.5 feet to the said West R/W line, thence S 17 degrees 26' 00" E for 10.25 feet to the Point of Beginning.

ALSO LESS AND EXCEPT THE FOLLOWING:

Part of the tract described in the Garland County Deed and Mortgage Records in Book 1700 at Page 186, more particularly described as follows: Commencing at the concrete R/W marker on the West R/W line of Ark. Hwy. 7 (Central Ave.) at Station 453+12 (ahead) of Job 6708, thence S 09 degrees 46' 00" E for 47.9 feet along said R/W to a chain link fence, thence N 87 degrees 16' 00" W for 130.7 feet, thence West parallel to the South line of the NW 1/4 SEI/4 of Section 17, Township 3 South, Range 19 West for 47 feet to the East line of this tract and the Point of Beginning for this Parcel B, thence North on said East line for 175.8 feet, thence S 76 degrees 54' 59" W for 16.6 feet, thence S 04 degrees 07' 13" E for 172.45' to the Point of Beginning.

TRACT 2:

Part of the NW 1/4 SEI/4 of Section 17, Township 3 South, Range 19 West, the tract described in the Garland County Deed and Mortgage Records in Book 1155 at Page 528 more particularly described as follows: Commencing at a point on the East line of the NW 1/4 SEI/4 of Section 17, Township 3 South, Range 19 West, that is 428.5 feet North of the Southeast corner of said N W 1/4 SEI/4, thence West parallel to the South line of said NW 1/4 SEI/4 for 47 feet, thence North and parallel to the East line of said NW 1/4 SEI/4 for 175.8 feet to the Point of Beginning for this tract, thence N 76 degrees 54' 59" E for 73.71 feet to the West end of Parcel A, thence S 89 degrees 16' 58" W for 71.4 feet on the North line of this tract to its Northwest corner, thence South parallel to the East line of said NW 1/4 SEI/4 for 15.7 feet to the Point of Beginning of this Parcel C.

TRACT 3:

Lots One (1), Two (2) and Three (3) in Block One (1) of the Wright's Subdivision #2 AND Part of the NW 1/4 SEI/4 Section 17, Township 3 South, Range 19 West, described as follows: Begin at the SE corner of said Lot 3 and run West on the South line of said Lot 3 a distance of 256.6 feet to the East side of Normandy Drive; thence North 1 degree 15' West along the East side of Normandy Drive 375 feet to the South side of Franklin Street; thence South 89 degrees East along the South side of Franklin Street 412 feet; thence an angle to the right of 88

degrees 08' a distance of 355 feet; thence South 85 degrees 45' West a distance of 155.4 feet to the Point of Beginning.

LESS AND EXCEPT THE FOLLOWING:

Lots 1, 2 and 3, Block 1, Wright's Subdivision #2, being a part of the Northwest 1/4 of the Southeast 1/4 of Section 17, Township 3 South of the Baseline Range 19 West of the Fifth Principal Meridian, City of Hot Springs, Garland County, Arkansas, more particularly described as follows: Beginning at the Southeast corner of Lot 3, Block 1, said Wright's Subdivision #2, thence North 87 degrees 59 minutes 51 seconds West along the South line of Lot 3 a distance of 255.31 feet to a rebar and cap (PLS #314) and the East right of way (R/W) of Normandy Street and the Southwest corner of Lot 3, thence North 00 degrees 56 minutes 13 seconds East along the West line of Lot 3 and Lot 2 and the R/W line of Normandy Street, a distance of 370.60 feet to a rebar and cap (PLS #314) on the South R/W line of Franklin Street and the Northwest corner of Lot 2, thence South 88 degrees 00 minutes 21 seconds East along the South R/W line of Franklin Street and the North line of Lots 1 and 2, a distance of 258.27 feet to the Northeast corner of Lot 1, thence South 01 degree 25 minutes 45 seconds West along the East line of Lots 1 and 3, a distance of 370.60 feet to the Point of Beginning.

ALSO LESS AND EXCEPT THE FOLLOWING:

An unplatted part of the Northwest 1/4 of the Southeast 1/4 of Section 17, Township 3 South of the Baseline Range 19 West of the Fifth Principal Meridian, City of Hot Springs, Garland County, Arkansas, more particularly described as follows: Beginning at the Northeast corner of Lot 1, Block 1, Wright's Subdivision #2, thence North 89 degrees 56 minutes 21 seconds East along the South R/W line of Franklin Street, a distance of 123.33 feet to a 12 inch spike and cap (Brady), thence South 02 degrees 14 minutes 38 seconds West, a distance of 366.59 feet to 12 inch spike and cap (Brady), thence South 87 degrees 54 minutes 57 seconds West, a distance of 118.50 feet to the Southeast corner of Lot 3, Block 1, Wright's Subdivision #2, thence North 01 degree 25 minutes 45 seconds East along the East line of Lots 1 and 3, a distance of 370.60 feet to the Point of Beginning.

9. That upon this property, the Plaintiffs operate a nursery with the purpose of growing and selling flowers, plants, and other landscaping materials.

10. That until recently, upon any rain, stormwater quickly flows from the Plaintiff's property through the Defendant's property and to the street for drainage since at least the time it was originally purchased by the Trustees in 2002.

11. That historically, the property of the Plaintiff would quickly dissipate stormwater after a rain no matter how severe this flow of stormwater and the Plaintiff's property has not been prone to flooding.

12. That within the past year, the Defendant began to engage in construction of a wall/ concrete dam on property located near and adjacent to the Plaintiff's property with the Plaintiffs' property being located in higher geography in certain parts relative to the Property of the Defendant.

13. As the construction commenced, it became clear that the Defendant was constructing the wall/ concrete dam constructed for the purpose of stopping stormwater flow in total and complete disregard for the rights of the Plaintiff and toward his property.

14. That upon erection of the wall/concrete dam by the Defendant, the Plaintiff's property began to immediately start flooding upon any rain as it slowed and ultimately stopped the natural flow of water.

15. Due to the change to the natural draining of stormwater on the property of the Defendant, the Plaintiff is experiencing swamp like conditions on its property with water not dissipating and creating a wetland on Plaintiff's property.

16. That since the change made by the Defendant, every time there is a rain of any substance, it causes severe flooding on the property of the Plaintiff.

17. The Plaintiff complained to the Defendant and was assured that corrective measures would be taken and that no further harm would occur to Plaintiff's property, but despite the Defendant's representations, damage continued until it became obvious that

the natural flow of water had been slowed and stopped causing water to stand on the Plaintiff's property making the property unusable for long periods of time after any rain.

### **REQUEST FOR TEMPORARY RESTRAINING ORDER**

18. That the Plaintiffs reassert and re-allege all allegations contained in paragraphs 1 - 17 as it set forth word for word.

19. That the Plaintiff submits that a temporary restraining order is necessary in this matter to prevent the continued flood and stormwater drainage from coming on to his property. This trespass of water upon his property has created a nuisance and is continuing to threaten the destruction of numerous vegetation and damage to the Plaintiff's property.

20. That the Plaintiff submits that a temporary restraining order should issue preventing the Defendant from continued construction on his dam which cause irreparable harm and damage to the Plaintiff's property.

### **REQUEST FOR PERMANENT AND MANDATORY INJUNCTION**

21. That the Plaintiffs reassert and re-allege all allegations contained in paragraphs 1 - 20 as it set forth word for word.

22. That the Plaintiff submits that the Defendant is attempting to wrongfully take part of its property by the redistribution of water.

23. That the Plaintiff submits that the Defendants are apparently stopping any stormwater from flowing across his property he knew or should have known cause stormwater to stand and flood upon the Plaintiff's property.

24. That the Plaintiff would request that the Defendant be placed under a permanent injunction enjoining the Defendant from placing anything onto his property that changes the natural flow of water from the property of the Defendant onto the property of the Plaintiff that impedes the natural flow of water.

25. That the Plaintiff would request that the Defendant be placed under a permanent injunction enjoining the Defendants from making any alterations whatsoever to Defendants' property that changes the natural flow of water.

26. That the Plaintiff would request that the Defendant be required to remove the concrete structures erected by the Defendant at interfere in any manner the natural flow of stormwater.

27. That the Defendant should be permanently enjoined from erection of any wall/ dam or other object which creates a dam and impedes the natural flow of stormwater from one property to the next.

28. That the Plaintiff submits that this permanent injunction is necessary in order that irreparable harm can be prevented and that the Plaintiff can continue to enjoy the property in the manner and in the state in which it acquired said property.

### **REQUEST FOR DAMAGES**

29. That the Plaintiff reasserts and re-alleges all allegations contained in paragraphs 1 - 28 as it set forth word for word.

30. That the Plaintiff submits that it has incurred damages as a result of the actions on the part of the Defendant.



31. Specifically, the flow of stormwater onto its property caused by the construction is a trespass and as a result of same, this Plaintiff is entitled to damages.

32. That the Defendant is the owner of the real property on which the construction is occurring. This Defendant has directed and authorized the construction operation knowing full well that the construction would cause a disruption in the flow of stormwater and damage to the property of adjacent property owners.

33. That the Plaintiff submits that it is entitled to a judgment under the cleanup doctrine for any damages that have occurred as a result of the actions or the omissions of the Defendant.

#### **ATTORNEY FEES AND EXPENSES**

34. That the Plaintiff reasserts and re-alleges all allegations contained in paragraphs 1-33 as it set forth word for word.

35. That the Plaintiff submits that as a result of the conduct of the Defendant, it has been forced to bring this cause of action.

36. That the Plaintiff has incurred attorney fees and expenses involved in this case, and therefore the Defendant should be responsible for payment of all costs, expenses, and attorney fees incurred by the Plaintiff.

37. The Plaintiff would ask for a judgment against the Defendant for attorney fees, costs, and expenses incurred herein.

**WHEREFORE**, the Plaintiff, **HARRY & JEAN CHILDS TRUST**, prays for the Court to provide them with the following relief:

- a. An emergency temporary injunction Ordering the Defendant cease and desist any further construction of walls until a final hearing may be held;
- b. a permanent injunctive Order requiring that the Defendant remove the cement wall erected;
- c. a permanent injunctive Order requiring that the Defendant cease and desist any further construction or affirmative actions that impede the natural flow of storm water on his property in perpetuity;
- d. that the Plaintiff have a judgment against the Defendant for damage to its property done by the acts of the Defendant;
- e. the Plaintiff has a judgement for attorney fees, costs, and expenses incurred in the prosecution of this cause of action which was required due to the conduct of the Defendant; and
- f. a judgment against the Defendant for all other just and proper relief to which the Plaintiffs may be entitled.

Respectfully submitted,

**HARRY & JEAN CHILDS TRUST, Plaintiff**

By: \_\_\_\_\_



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