DISTRICT COURT, WELD COUNTY, COLORADO 901 9th Avenue, P.O. Box 2038, Greeley, CO 80632 (970) 475-2400	DATE FILED: June 4, 2018 8:53 AM CASE NUMBER: 2015CV30776
Plaintiffs: **Motherlove Herbal Company**; **Indianhead West Homeowners Association, Inc.**; **Rockin S Ranch LLC**; **John Cummings**; **David Kisker**; **Gary Oplinger**; **Wolfgang Dirks**; and **James Piraino** *v.* *Defendants:* **The Board of County Commissioners of Weld County, Colorado**; **Martin Marietta Materials, Inc.**; **Gerrard Investments, LLC**; **Weld LV LLC**; and **Weld LV II, LLC**	▲ COURT USE ONLY ▲ Case No. 2015 CV 30776 Division 4

Order Denying Plaintiffs' Motion for Amended Judgment

The plaintiffs move to amend the judgment entered May 1 under C.R.C.P. 59(a)(4). Because the plaintiffs' motion is frivolous as argued, I deny the motion.

The plaintiffs waste the first ten pages of their motion providing information that might be appropriate for a press release, but which has no basis in the record before the court. The plaintiffs finally cite legal authority and get to the relief they seek on page 11: a mandatory injunction under C.R.C.P. 65. The problem is, before judgment entered in this case, the plaintiffs never made a claim for injunctive relief. I dismissed the plaintiffs' declaratory judgment claim back in January 2016, and they did not appeal that dismissal. They also did not request the Court of Appeals to remand the case for this court to consider the relief they now seek.

This case is an action under C.R.C.P. 106(a)(4), and that rule couldn't be more clear: While the "proceedings before or decision of the [governmental]

body … may be stayed" under C.R.C.P. 65, the court's review "*shall be limited* to a determination whether the [governmental] body … exceeded its jurisdiction or abused its discretion …." C.R.C.P. 106(a)(4)(I) & (V) (emphasis added). So this case is not an equitable action and the court has no authority to consider the equitable remedies that the plaintiffs now seek post-judgment.

Thus, the plaintiffs' request for injunctive relief has no legal basis. And because the court has not held a trial on the relief that the plaintiffs seek—and therefore has not heard any testimony nor received any evidence that supports the relief the plaintiffs seek—the plaintiffs' request for injunctive relief has no factual basis. The plaintiffs instead ask the court to take action without first providing the defendants with due process of law and without any evidentiary basis in the record.

While a lay person might mistakenly believe that a court has the power to grant a form of relief that was not requested before the judgment entered, the plaintiffs' lawyers should know better. A claim is frivolous if the proponent can present no rational supporting argument based on the evidence or law. *W. United Realty, Inc. v. Isaacs*, 679 P.2d 1063, 1069 (Colo. 1984); *see also Averyt v. Wal-Mart Stores, Inc.*, 2013 COA 10, ¶¶ 40, 43. ("[A]n appeal should be considered frivolous if the proponent can present no rational argument based on the evidence or law in support of a proponent's claim or defense, or the appeal is prosecuted for the sole purpose of harassment or delay."). And here neither the law nor the evidence in the record supports the relief sought by the plaintiffs. Thus, the motion to amend the judgment to provide injunctive relief that was not pleaded, nor requested before the judgment entered, is a frivolous motion.

Accordingly, the plaintiff's motion to amend the judgment is DENIED.

So Ordered:
June 4, 2018

BY THE COURT:

Todd Taylor
District Court Judge